

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
RC PETITION

DO NOT WRITE IN THIS SPACE

Case No.

29-RC-275629

Date Filed

04/15/2021

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlr.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer:
Children's Village

2b. Address(es) of Establishment(s) involved (Street and number, City, State, ZIP code):
1133 Forest Hill Road, Staten Island, NY 10314

3a. Employer Representative - Name and Title:
Deborah Finley-Troup, VP Human Resources

3b. Address (if same as 2b - state same):
same

3c. Tel. No.
914-693--0600 x 1213

3d. Cell No.

3e. Fax No.

3f. E-Mail Address
dfinley@Childrensvillage.org

4a. Type of Establishment (Factory, mine, wholesaler, etc.)
juvenile corrections facility

4b. Principal Product or Service
corrections facility

5a. City and State where unit is located:
Staten Island, NY

5b. Description of Unit Involved:

Included:
All full-time and regular part-time security guards.

Excluded:
All other employees.

6a. Number of Employees in Unit:
17

6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner? ☐ Yes ☐ No

Check One: ☐ 7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about (Date) _____ (If no reply received, so state).
☐ 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8a. Name of Recognized or Certified Bargaining Agent (if none, so state)
DC 37

8b. Address:
55 Water Street NY, NY. 10041

8c. Tel. No.
212 -815-1000

8d. Cell No.

8e. Fax No.
212-815-1321

8f. E-Mail Address

8g. Affiliation, if any:

8h. Date of Recognition or Certification

8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)

9. Is there now a strike or picketing at the Employer's establishment(s) involved? No If so, approximately how many employees are participating? _____
(Name of Labor Organization) _____, has picketed the Employer since (Month, Day, Year) _____

10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)
none

10a. Name
none

10b. Address

10c. Tel. No.

10d. Cell No.

10e. Fax No.

10f. E-Mail Address

11. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election: **11a. Election Type:**
☐ Manual ☒ Mail ☐ Mixed Manual/Mail

11b. Election Date(s):

11c. Election Time(s):

11d. Election Location(s):

12a. Full Name of Petitioner (including local name and number):
Special Patrolman Benevolent Association

12b. Address (street and number, city, State and ZIP code):
1707 Unionport Road, Bronx, NY 10462

12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state):
none

12d. Tel. No.
917-499-2891

12e. Cell No.

12f. Fax No.

12g. E-Mail Address
vze15p8p9@verizon.net

13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.

13a. Name and Title:
Ron Brown, Vice-President of Administration

13b. Address (street and number, city, State and ZIP code):
1707 Unionport Road, Bronx, NY 10462

13c. Tel. No.
917-499-2891

13d. Cell No.

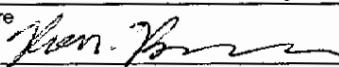
13e. Fax No.

13f. E-Mail Address
vze15p8p9@verizon.net

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print)
Ron Brown

Signature



Title

Vice-President of Administration

Date

4/13/21

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 29
Two Metro Tech Center
Suite 5100
Brooklyn, NY 11201-3838

Agency Website: www.nlr.gov
Telephone: (718)330-7713
Fax: (718)330-7579



Download
NLRB
Mobile App

April 15, 2021

URGENT

dfinley@childrensvillage.org
Deborah Finley-Troup, VP Human Resources
Children's Village
1133 Forest Hill Road
Staten Island, NY 10314

Re: Children's Village
Case No. 29-RC-275629

Dear Ms. Finley-Troup:

Enclosed is a copy of a petition that Special Patrolman Benevolent Association filed with the National Labor Relations Board (NLRB) seeking to represent certain of your employees. After a petition is filed, the employer is required to promptly take certain actions so please read this letter carefully to make sure you are aware of the employer's obligations. This letter tells you how to contact the Board agent who will be handling this matter, about the requirement to post and distribute the Notice of Petition for Election, the requirement to complete and serve a Statement of Position Form, the Petitioner's requirement to complete and serve a Responsive Statement of Position Form, a scheduled hearing in this matter, other information needed including a voter list, your right to be represented, and NLRB procedures, including how to submit documents to the NLRB.

Investigator: This petition will be investigated by Field Examiner Ioulia Fedorova whose telephone number is (718)765-6191. The Board agent will contact you shortly to discuss processing the petition. If you have any questions, please do not hesitate to call the Board agent. If the agent is not available, you may contact Supervisory Field Examiner Kate Anderson whose telephone number is (718)765-6181. The Board agent may also contact you and the other party or parties to schedule a conference meeting or telephonic or video conference for some time before the close of business the day following receipt of the final Responsive Statement(s) of Position. This will give the parties sufficient time to determine if any issues can be resolved prior to hearing or if a hearing is necessary. If appropriate, the NLRB attempts to schedule an election either by agreement of the parties or by holding a hearing and then directing an election.

Required Posting and Distribution of Notice: You must post the enclosed Notice of Petition for Election by **Thursday, April 22, 2021** in conspicuous places, including all places where notices to employees are customarily posted. The Notice of Petition for Election must be posted so all pages are simultaneously visible. If you customarily communicate electronically with employees in the petitioned-for unit, you must also distribute the notice electronically to them. You must maintain the posting until the petition is dismissed or withdrawn or this notice

is replaced by the Notice of Election. Posting and distribution of the Notice of Petition for Election will inform the employees whose representation is at issue and the employer of their rights and obligations under the National Labor Relations Act in the representation context. Failure to post or distribute the notice may be grounds for setting aside an election if proper and timely objections are filed.

Required Statement of Position: In accordance with Section 102.63(b) of the Board's Rules, the employer is required to complete the enclosed Statement of Position form (including the attached Commerce Questionnaire), have it signed by an authorized representative, and file a completed copy (with all required attachments) with this office and serve it on all parties named in the petition such that it is received by them by **noon Eastern Time on April 27, 2021**. This form solicits information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. **This form must be e-Filed, but unlike other e-Filed documents, will *not* be timely if filed on the due date but after noon April 27, 2021.** If you have questions about this form or would like assistance in filling out this form, please contact the Board agent named above.

List(s) of Employees: The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional%20Forms%20for%20Voter%20List.docx)

Failure to Supply Information: Failure to supply the information requested by this form may preclude you from litigating issues under Section 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a

voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§ 102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

Responsive Statement of Position: In accordance with Section 102.63(b) of the Board's Rules, following timely filing and service of an employer's Statement of Position, the petitioner is required to complete the enclosed Responsive Statement of Position form, have it signed by an authorized representative, and file a completed copy with any necessary attachments, with this office and serve it on all parties named in the petition responding to the issues raised in the employer's Statement of Position, such that it is received no later than **noon Eastern Time on Friday, April 30, 2021.**

Notice of Hearing: Enclosed is a Notice of Representation Hearing to be conducted at **9:30 AM on Wednesday, May 5, 2021 via Video Conference**, if the parties do not voluntarily agree to an election. If a hearing is necessary, the hearing will run on consecutive days until concluded unless the regional director concludes that extraordinary circumstances warrant otherwise. Before the hearing begins, the NLRB will continue to explore potential areas of agreement with the parties in order to reach an election agreement and to eliminate or limit the costs associated with formal hearings.

Upon request of a party showing good cause, the regional director may postpone the hearing. A party desiring a postponement should make the request to the regional director in writing, set forth in detail the grounds for the request, and include the positions of the other parties regarding the postponement. E-Filing the request is required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Other Information Needed Now: Please submit to this office, as soon as possible, the following information needed to handle this matter:

- (a) A copy of any existing or recently expired collective-bargaining agreements, and any amendments or extensions, or any recognition agreements covering any of your employees in the unit involved in the petition (the petitioned-for unit);

- (b) The name and contact information for any other labor organization (union) claiming to represent any of the employees in the petitioned-for unit;
- (c) If potential voters will need notices or ballots translated into a language other than English, the names of those languages and dialects, if any.
- (d) If you desire a formal check of the showing of interest, you must provide an alphabetized payroll list of employees in the petitioned-for unit, with their job classifications, for the payroll period immediately before the date of this petition. Such a payroll list should be submitted as early as possible prior to the hearing. Ordinarily a formal check of the showing of interest is not performed using the employee list submitted as part of the Statement of Position.

Voter List: If an election is held in this matter, the employer must transmit to this office and to the other parties to the election, an alphabetized list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular telephone numbers) of eligible voters. Usually, the list must be furnished within 2 business days of the issuance of the Decision and Direction of Election or approval of an election agreement. I am advising you of this requirement now, so that you will have ample time to prepare this list. The list must be electronically filed with the Region and served electronically on the other parties. To guard against potential abuse, this list may not be used for purposes other than the representation proceeding, NLRB proceedings arising from it or other related matters.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlr.gov, or at the Regional office upon your request.

If someone contacts you about representing you in this case, please be assured that no organization or person seeking your business has any “inside knowledge” or favored relationship with the NLRB. Their knowledge regarding this matter was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Procedures: Pursuant to Section 102.5 of the Board’s Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency’s web site (www.nlr.gov). You must e-file all documents electronically or provide a written statement explaining why electronic submission is not possible or feasible. Failure to comply with Section 102.5 will result in rejection of your submission. The Region will make its determinations solely based on the documents and evidence properly submitted. All evidence submitted electronically should be in the form in which it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native

format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the petition.

Information about the NLRB and our customer service standards is available on our website, www.nlr.gov, or from an NLRB office upon your request. We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathy Drew-King", is positioned above the typed name.

KATHY DREW-KING
Regional Director

Enclosures

1. Petition
2. Notice of Petition for Election (Form 5492)
3. Notice of Representation Hearing
4. Description of Procedures in Certification and Decertification Cases (Form 4812)
5. Statement of Position form and Commerce Questionnaire (Form 505)
6. Responsive Statement of Position (Form 506)



National Labor Relations Board



NOTICE OF PETITION FOR ELECTION

This notice is to inform employees that Special Patrolman Benevolent Association has filed a petition with the National Labor Relations Board (NLRB), a Federal agency, in Case 29-RC-275629 seeking an election to become certified as the representative of the employees of Children's Village in the unit set forth below:

Included: All full-time and regular part-time security guards. Excluded: All other employees

This notice also provides you with information about your basic rights under the National Labor Relations Act, the processing of the petition, and rules to keep NLRB elections fair and honest.

YOU HAVE THE RIGHT under Federal Law

- To self-organization
- To form, join, or assist labor organizations
- To bargain collectively through representatives of your own choosing
- To act together for the purposes of collective bargaining or other mutual aid or protection
- To refuse to do any or all of these things unless the union and employer, in a state where such agreements are permitted, enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustments).

PROCESSING THIS PETITION

Elections do not necessarily occur in all cases after a petition is filed. **NO FINAL DECISIONS HAVE BEEN MADE YET** regarding the appropriateness of the proposed unit or whether an election will be held in this matter. If appropriate, the NLRB will first see if the parties will enter into an election agreement that specifies the method, date, time, and location of an election and the unit of employees eligible to vote. If the parties do not enter into an election agreement, usually a hearing is held to receive evidence on the appropriateness of the unit and other issues in dispute. After a hearing, an election may be directed by the NLRB, if appropriate.

IF AN ELECTION IS HELD, it will be conducted by the NLRB by secret ballot and Notices of Election will be posted before the election giving complete details for voting.

ELECTION RULES

The NLRB applies rules that are intended to keep its elections fair and honest and that result in a free choice. If agents of any party act in such a way as to interfere with your right to a free

election, the election can be set aside by the NLRB. Where appropriate the NLRB provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with employees' rights and may result in setting aside the election:

- **Threatening loss of jobs or benefits by an employer or a union**
- **Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises**
- **An employer firing employees to discourage or encourage union activity or a union causing them to be fired to encourage union activity**
- **Making campaign speeches to assembled groups of employees on company time, where attendance is mandatory, within the 24-hour period before the polls for the election first open or, if the election is conducted by mail, from the time and date the ballots are scheduled to be sent out by the Region until the time and date set for their return**
- **Incitement by either an employer or a union of racial or religious prejudice by inflammatory appeals**
- **Threatening physical force or violence to employees by a union or an employer to influence their votes**

Please be assured that IF AN ELECTION IS HELD, every effort will be made to protect your right to a free choice under the law. Improper conduct will not be permitted. All parties are expected to cooperate fully with the NLRB in maintaining basic principles of a fair election as required by law. The NLRB as an agency of the United States Government does not endorse any choice in the election.

For additional information about the processing of petitions, go to www.nlr.gov or contact the NLRB at (718)330-7713.

THIS IS AN OFFICIAL GOVERNMENT NOTICE AND MUST NOT BE DEFACED BY ANYONE. IT MUST REMAIN POSTED WITH ALL PAGES SIMULTANEOUSLY VISIBLE UNTIL REPLACED BY THE NOTICE OF ELECTION OR THE PETITION IS DISMISSED OR WITHDRAWN.



National Labor Relations Board





**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**



Children's Village Employer and Special Patrolman Benevolent Association Petitioner	Case 29-RC-275629
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NOTICE OF REPRESENTATION HEARING

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

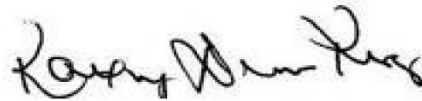
YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 9:30 AM on **Wednesday, May 5, 2021** and on consecutive days thereafter until concluded, via Video Conference, , a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony. The parties will received an invitation to the video conference hearing in a separate communication.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.63(b) of the Board's Rules and Regulations, Children's Village must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that is received by them by no later than **noon** Eastern time on **April 27, 2021**. Following timely filing and service of a Statement of Position by Children's Village, the Petitioner must complete its Responsive Statement of Position(s) responding to the issues raised in the Employer's and/or Union's Statement of Position and file them and all attachments with the Regional Director and serve them on the parties named in the petition such they are received by them no later than **noon** Eastern on **Friday, April 30, 2021**.

Pursuant to Section 102.5 of the Board's Rules and Regulations, all documents filed in cases before the Agency must be filed by electronically submitting (E-Filing) through the Agency's website (www.nlrb.gov), unless the party filing the document does not have access to the means for filing electronically or filing electronically would impose an undue burden. Documents filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Detailed instructions for using the NLRB's E-Filing system can be found in the [E-Filing System User Guide](#)

The Statement of Position and Responsive Statement of Position must be E-Filed but, unlike other E-Filed documents, must be filed by **noon** Eastern on the due date in order to be timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position and Responsive Statement of Position are not required to be filed. If an election agreement is signed by all parties and returned to the Regional office after the due date of the Statement of Position but before the due date of the Responsive Statement of Position, the Responsive Statement of Position is not required to be filed.

Dated: April 15, 2021



KATHY DREW-KING
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 29
Two Metro Tech Center
Suite 5100
Brooklyn, NY 11201-3838

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

Children's Village Employer and Special Patrolman Benevolent Association Petitioner	Case 29-RC-275629
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AFFIDAVIT OF SERVICE OF: Petition dated April 13, 2021, Notice of Representation Hearing dated April 15, 2021, Description of Procedures in Certification and Decertification Cases (Form NLRB-4812), Notice of Petition for Election, and Statement of Position Form (Form NLRB-505).

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on April 15, 2021, I served the above documents by **electronic mail and regular mail** upon the following person, addressed to them at the following address:

Deborah Finley-Troup, VP Human Resources
Children's Village
1133 Forest Hill Road
Staten Island, NY 10314
dfinley@childrensvillage.org

April 15, 2021
Date

Sharon Marfan, Designated Agent of NLRB
Name

/s/ Sharon Marfan
Signature

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

**DESCRIPTION OF REPRESENTATION CASE PROCEDURES
IN CERTIFICATION AND DECERTIFICATION CASES**

The National Labor Relations Act grants employees the right to bargain collectively through representatives of their own choosing and to refrain from such activity. A party may file an RC, RD or RM petition with the National Labor Relations Board (NLRB) to conduct a secret ballot election to determine whether a representative will represent, or continue to represent, a unit of employees. An **RC** petition is generally filed by a union that desires to be certified as the bargaining representative. An **RD** petition is filed by employees who seek to remove the currently recognized union as the bargaining representative. An **RM** petition is filed by an employer who seeks an election because one or more individuals or unions have sought recognition as the bargaining representative, or based on a reasonable belief supported by objective considerations that the currently recognized union has lost its majority status. This form generally describes representation case procedures in RC, RD and RM cases, also referred to as certification and decertification cases.

Right to be Represented – Any party to a case with the NLRB has the right to be represented by an attorney or other representative in any proceeding before the NLRB. A party wishing to have a representative appear on its behalf should have the representative complete a Notice of Appearance (Form NLRB-4701), and E-File it at www.nlr.gov or forward it to the NLRB Regional Office handling the petition as soon as possible.

Filing and Service of Petition – A party filing an RC, RD or RM petition is required to serve a copy of its petition on the parties named in the petition along with this form and the Statement of Position form. The petitioner files the petition with the NLRB, together with (1) a certificate showing service of these documents on the other parties named in the petition, and (2) a showing of interest to support the petition. The showing of interest is not served on the other parties.

Notice of Hearing – After a petition in a certification or decertification case is filed with the NLRB, the NLRB reviews the petition, certificate of service, and the required showing of interest for sufficiency, assigns the petition a case number, and promptly sends letters to the parties notifying them of the Board agent who will be handling the case. In most cases, the letters include a Notice of Representation Hearing. Except in cases presenting unusually complex issues, this pre-election hearing is set for a date 14 business days (excluding weekends and federal holidays) from the date of service of the notice of hearing. Once the hearing begins, it will continue day to day until completed absent extraordinary circumstances. The Notice of Representation Hearing also sets the due date for filing and serving the Statement(s) of Position and the Responsive Statement of Position(s). Included with the Notice of Representation Hearing are the following: (1) copy of the petition, (2) this form, (3) Statement of Position for non-petitioning parties, (4) petitioner's Responsive Statement of Position, (5) Notice of Petition for Election, and (6) letter advising how to contact the Board agent who will be handling the case and discussing those documents.

Hearing Postponement: Requests to postpone the hearing are not routinely granted, but the regional director may postpone the hearing for good cause. A party wishing to request a postponement should make the request in writing and set forth in detail the grounds for the request. The request should include the positions of the other parties regarding the postponement. The request must be filed electronically ("E-Filed") on the Agency's website (www.nlr.gov) by following the instructions on the website. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Statement of Position Form and List(s) of Employees – The Statement of Position form solicits commerce and other information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. In an **RC** or **RD** case, as part of its Statement of Position form, the employer also provides a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. If the employer contends that the proposed unit is not appropriate, the employer must separately list the same information for all individuals that the employer contends must be added to the proposed unit to make it an appropriate unit, and must further indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional

form for the list is provided on the NLRB website at www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx

Ordinarily the Statement of Position must be filed with the Regional Office and served on the other parties such that it is received by them by noon 8 business days from the issuance of the Notice of Hearing. The regional director may postpone the due date for filing and serving the Statement of Position for good cause. The Statement of Position form must be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Statement of Position requirement are discussed on the following page under the heading "Preclusion." A request to postpone the hearing will not automatically be treated as a request for an extension of the Statement of Position due date. If a party wishes to request both a postponement of the hearing and a postponement of the Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

Responsive Statement of Position – Petitioner's Responsive Statement(s) of Position solicits a response to the Statement(s) of Position filed by the other parties and further facilitates entry into election agreements or streamlines the preelection hearing. A petitioner must file a Responsive Statement of Position in response to each party's Statement of Position addressing each issue in each Statement of Position(s), if desired. In the case of an RM petition, the employer-petitioner must also provide commerce information and file and serve a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. Ordinarily, the Responsive Statement of Position must be electronically filed with the Regional Office and served on the other parties such that it is received by noon 3 business days prior to the hearing. The regional director may postpone the due date for filing and serving the Responsive Statement of Position for good cause. The Responsive Statement of Position form must be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Responsive Statement of Position requirement are discussed on the following page under the heading "Preclusion." A request to postpone the hearing will not automatically be treated as a request for an extension of the Responsive Statement of Position due date. If a party wishes to request both a postponement of the hearing and a Postponement of the Responsive Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

Posting and Distribution of Notice of Petition for Election – Within 5 business days after service of the notice of hearing, the employer must post the Notice of Petition for Election in conspicuous places, including all places where notices to employees are customarily posted, and must also distribute it electronically to the employees in the petitioned-for unit if the employer customarily communicates with these employees electronically. The employer must maintain the posting until the petition is dismissed or withdrawn, or the Notice of Petition for Election is replaced by the Notice of Election. The employer's failure properly to post or distribute the Notice of Petition for Election may be grounds for setting aside the election if proper and timely objections are filed.

Election Agreements – Elections can occur either by agreement of the parties or by direction of the regional director or the Board. Three types of agreements are available: (1) a Consent Election Agreement (Form NLRB-651); (2) a Stipulated Election Agreement (Form NLRB-652); and (3) a Full Consent Agreement (Form NLRB-5509). In the Consent Election Agreement and the Stipulated Election Agreement, the parties agree on an appropriate unit and the method, date, time, and place of a secret ballot election that will be conducted by an NLRB agent. In the Consent Agreement, the parties also agree that post-election matters (election objections or determinative challenged ballots) will be resolved with finality by the regional director; whereas in the Stipulated Election Agreement, the parties agree that they may request Board review of the regional director's post-election determinations. A Full Consent Agreement provides that the regional director will make final determinations regarding all pre-election and post-election issues.

Hearing Cancellation Based on Agreement of the Parties – The issuance of the Notice of Representation Hearing does not mean that the matter cannot be resolved by agreement of the parties. On the contrary, the NLRB encourages prompt voluntary adjustments and the Board agent assigned to the case will work with the parties to enter into an election agreement, so the parties can avoid the time and expense of participating in a hearing.

Hearing – A hearing will be held unless the parties enter into an election agreement approved by the regional director or the petition is dismissed or withdrawn.

Purpose of Hearing: The primary purpose of a pre-election hearing is to determine if a question of representation exists. A question of representation exists if a proper petition has been filed concerning a unit

appropriate for the purpose of collective bargaining or, in the case of a decertification petition, concerning a unit in which a labor organization has been certified or is being currently recognized by the employer as the bargaining representative.

Issues at Hearing: Issues that might be litigated at the pre-election hearing include: jurisdiction; labor organization status; bars to elections; unit appropriateness; expanding and contracting unit issues; inclusion of professional employees with nonprofessional employees; seasonal operation; potential mixed guard/non-guard unit; and eligibility formulas. At the hearing, the timely filed Statement of Position and Responsive Statement of Position(s) will be received into evidence. The hearing officer will not receive evidence concerning any issue as to which the parties have not taken adverse positions, except for evidence regarding the Board's jurisdiction over the employer and evidence concerning any issue, such as the appropriateness of the proposed unit, as to which the regional director determines that record evidence is necessary.

Preclusion: At the hearing, a party will be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or Responsive Statement of Position(s) or to place in dispute in timely response to another party's Statement of Position or response, except that no party will be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. As set forth in §102.66(d) of the Board's rules, if the employer fails to timely furnish the lists of employees, the employer will be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

Conduct of Hearing: If held, the hearing is usually open to the public and will be conducted by a hearing officer of the NLRB. Any party has the right to appear at any hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record evidence of the significant facts that support the party's contentions and are relevant to the existence of a question of representation. The hearing officer also has the power to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence. Witnesses will be examined orally under oath. The rules of evidence prevailing in courts of law or equity shall not be controlling. Parties appearing at any hearing who have or whose witnesses have disabilities falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, should notify the regional director as soon as possible and request the necessary assistance.

Official Record: An official reporter will make the only official transcript of the proceedings and all citations in briefs or arguments must refer to the official record. (Copies of exhibits should be supplied to the hearing officer and other parties at the time the exhibit is offered in evidence.) All statements made at the hearing will be recorded by the official reporter while the hearing is on the record. If a party wishes to make off-the-record remarks, requests to make such remarks should be directed to the hearing officer and not to the official reporter. After the close of the hearing, any request for corrections to the record, either by stipulation or motion, should be forwarded to the regional director.

Motions and Objections: All motions must be in writing unless stated orally on the record at the hearing and must briefly state the relief sought and the grounds for the motion. A copy of any motion must be served immediately on the other parties to the proceeding. Motions made during the hearing are filed with the hearing officer. All other motions are filed with the regional director, except that motions made after the transfer of the record to the Board are filed with the Board. If not E-Filed, an original and two copies of written motions shall be filed. Statements of reasons in support of motions or objections should be as concise as possible. Objections shall not be deemed waived by further participation in the hearing. On appropriate request, objections may be permitted to stand to an entire line of questioning. Automatic exceptions will be allowed to all adverse rulings.

Election Details: Prior to the close of the hearing the hearing officer will: (1) solicit the parties' positions (but will not permit litigation) on the type, date(s), time(s), and location(s) of the election and the eligibility period; (2) solicit the name, address, email address, facsimile number, and phone number of the employer's on-site representative to whom the regional director should transmit the Notice of Election if an election is directed; (3) inform the parties that the regional director will issue a decision as soon as practicable and will immediately transmit the document to the parties and their designated representatives by email, facsimile, or by overnight mail (if neither an email address nor facsimile number was provided); and (4) inform the parties of their obligations if the director directs an election and of the time for complying with those obligations.

Oral Argument and Briefs: Upon request, any party is entitled to a reasonable period at the close of the hearing for oral argument, which will be included in the official transcript of the hearing. At any time before the close of the hearing, any party may file a memorandum addressing relevant issues or points of law. Post-hearing briefs shall be due within 5 business days of the close of the hearing. The hearing officer may allow up to 10 additional business days for such briefs prior to the close of hearing and for good cause. If filed, copies of the memorandum or brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the memorandum or brief. No reply brief may be filed except upon special leave of the regional director. Briefs including electronic documents, filed with the Regional Director must be formatted as double-spaced in an 8½ by 11 inch format and must be e-filed through the Board's website, www.nlr.gov.

Regional Director Decision - After the hearing, the regional director issues a decision directing an election, dismissing the petition or reopening the hearing. A request for review of the regional director's pre-election decision may be filed with the Board at any time after issuance of the decision until 10 business days after a final disposition of the proceeding by the regional director. Accordingly, a party need not file a request for review before the election in order to preserve its right to contest that decision after the election. Instead, a party can wait to see whether the election results have mooted the basis of an appeal. The Board will grant a request for review only where compelling reasons exist therefor.

Voter List – The employer must provide to the regional director and the parties named in the election agreement or direction of election a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular ("cell") telephone numbers) of all eligible voters. (In construction industry elections, unless the parties stipulate to the contrary, also eligible to vote are all employees in the unit who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.) The employer must also include in a separate section of the voter list the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge or those individuals who, according to the direction of election, will be permitted to vote subject to challenge. The list of names must be alphabetized (overall or by department) and be in the same Microsoft Word file (or Microsoft Word compatible file) format as the initial lists provided with the Statement of Position form unless the parties agree to a different format or the employer certifies that it does not possess the capacity to produce the list in the required form. When feasible, the list must be filed electronically with the regional director and served electronically on the other parties named in the agreement or direction. To be timely filed and served, the voter list must be received by the regional director and the parties named in the agreement or direction respectively within 2 business days after the approval of the agreement or issuance of the direction of elections unless a longer time is specified in the agreement or direction. A certificate of service on all parties must be filed with the regional director when the voter list is filed. The employer's failure to file or serve the list within the specified time or in proper format shall be grounds for setting aside the election whenever proper and timely objections are filed. The parties shall not use the list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

Waiver of Time to Use Voter List – Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 calendar days after the date when the employer must file the voter list with the Regional Office. However, the parties entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483. A waiver will not be effective unless all parties who are entitled to the list agree to waive the same number of days.

Election – Information about the election, requirements to post and distribute the Notice of Election, and possible proceedings after the election is available from the Regional Office and will be provided to the parties when the Notice of Election is sent to the parties.

Withdrawal or Dismissal – If it is determined that the NLRB does not have jurisdiction or that other criteria for proceeding to an election are not met, the petitioner is offered an opportunity to withdraw the petition. If the petitioner does not withdraw the petition, the regional director will dismiss the petition and advise the petitioner of the reason for the dismissal and of the right to appeal to the Board.

REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A STATEMENT OF POSITION FORM

Completing and Filing this Form: The Notice of Hearing indicates which parties are responsible for completing the form. If you are required to complete the form, you must have it signed by an authorized representative and file a completed copy (including all attachments) with the RD and serve copies on all parties named in the petition by the date and time established for its submission. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You must EFile your Statement of Position at www.nlrb.gov, but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed.**

Note: Non-employer parties who complete this Statement of Position are NOT required to complete items 8f and 8g of the form, or to provide a commerce questionnaire or the lists described in item 7.

Required Lists: The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx](http://www.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional%20Forms%20for%20Voter%20List.docx).

Consequences of Failure to Supply Information: Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
STATEMENT OF POSITION

DO NOT WRITE IN THIS SPACE

Case No.
29-RC-275629

Date Filed
April 14, 2021

INSTRUCTIONS: Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.

Note: Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7.

1a. Full name of party filing Statement of Position		1c. Business Phone:	1e. Fax No.:
1b. Address (Street and number, city, state, and ZIP code)		1d. Cell No.:	1f. e-Mail Address
2. Do you agree that the NLRB has jurisdiction over the Employer in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No (A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)			
3. Do you agree that the proposed unit is appropriate? <input type="checkbox"/> Yes <input type="checkbox"/> No (If not, answer 3a and 3b.)			
a. State the basis for your contention that the proposed unit is not appropriate. (If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards.)			
b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit.			
Added		Excluded	
4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility.			
5. Is there a bar to conducting an election in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, state the basis for your position.			
6. Describe all other issues you intend to raise at the pre-election hearing.			
7. The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx . (a) A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B) (b) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be <i>added</i> to the proposed unit, if any to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of any individuals it contends must be <i>excluded</i> from the proposed unit to make it an appropriate unit. (Attachment D)			
8a. State your position with respect to the details of any election that may be conducted in this matter. Type: <input type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail			
8b. Date(s)	8c. Time(s)	8d. Location(s)	
8e. Eligibility Period (e.g. special eligibility formula)	8f. Last Payroll Period Ending Date	8g. Length of payroll period <input type="checkbox"/> Weekly <input type="checkbox"/> Biweekly <input type="checkbox"/> Other (specify length)	
9. Representative who will accept service of all papers for purposes of the representation proceeding			
9a. Full name and title of authorized representative	9b. Signature of authorized representative		9c. Date
9d. Address (Street and number, city, state, and ZIP code)			9e. e-Mail Address
9f. Business Phone No.:		9g. Fax No.	9h. Cell No.

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME

CASE NUMBER
29-RC-275629

1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)

2. TYPE OF ENTITY

☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify)

3. IF A CORPORATION or LLC

A. STATE OF INCORPORATION
OR FORMATION

B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS

5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR

6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).

7A. PRINCIPAL LOCATION:

7B. BRANCH LOCATIONS:

8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

A. TOTAL:

B. AT THE ADDRESS INVOLVED IN THIS MATTER:

9. DURING THE MOST RECENT (Check the appropriate box): ☐ CALENDAR ☐ 12 MONTHS or ☐ FISCAL YEAR (FY DATES)

YES

NO

A. Did you **provide services** valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value.
\$B. If you answered no to 9A, did you **provide services** valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided. \$C. If you answered no to 9A and 9B, did you **provide services** valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$D. Did you **sell goods** valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$E. If you answered no to 9D, did you **sell goods** valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$F. Did you **purchase and receive goods** valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$G. Did you **purchase and receive goods** valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$H. **Gross Revenues** from all sales or performance of services (Check the largest amount):☐ \$100,000 ☐ \$250,000 ☐ \$500,000 ☐ \$1,000,000 or more If less than \$100,000, indicate amount.

I. Did you begin operations within the last 12 months? If yes, specify date:

10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?

☐ YES ☐ NO (If yes, name and address of association or group).

11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME

TITLE

E-MAIL ADDRESS

TEL. NUMBER

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)

SIGNATURE

E-MAIL ADDRESS

DATE

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A RESPONSIVE STATEMENT OF POSITION FORM

Completing and Filing this Form: For **RC and RD petitions**, the Petitioner is required to complete this form in response to each timely filed and served Statement of Position filed by another party. For **RM petitions**, the Employer-Petitioner must complete a Responsive Statement of Position form and submit the list described below. In accordance with Section 102.63(b) of the Board's Rules, if you are required to complete the form, you must have it signed by an authorized representative, and file a completed copy with any necessary attachments, with this office and serve it on all parties named in the petition responding to the issues raised in another party's Statement of Position, such that it is received no later than noon three business days before the date of the hearing. A separate form must be completed for each timely filed and properly served Statement of Position you receive. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You must E-File your Responsive Statement of Position at www.NLRB.gov, but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed. Note that if you are completing this form as a PDF downloaded from www.NLRB.gov, the form will lock upon signature and no further editing may be made.**

Required List: In addition to responding to the issues raised in another party's Statement of Position, if any, the Employer-Petitioner in an RM case is required to file and serve on the parties a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. This list must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the list in the required form, the list must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional%20Forms%20for%20Voter%20List.docx)

Consequences of Failure to Submit a Responsive Statement of Position: Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
RESPONSIVE STATEMENT OF POSITION – RC, RD or RM PETITION

DO NOT WRITE IN THIS SPACE

Case No.
29-RC-275629

Date Filed
April 14, 2021

INSTRUCTIONS: If a party has submitted and served on you a timely Statement of Position to an RC, RD or RM petition, the Petitioner must submit this Responsive Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and any attachments on each party named in the petition in this case such that it is received by noon local time, three business days prior to the hearing date specified in the Notice of Hearing. A separate form must be completed for each timely filed and properly served Statement of Position received by the Petitioner. The Petitioner-Employer in a RM case is required to file this Responsive Statement of Position and include an appropriate employee list without regard to whether another party has filed a Statement of Position.

This Responsive Statement of Position is filed by the Petitioner in response to a Statement of Position received from the following party:

The Employer

An Intervenor/Union

1a. Full Name of Party Filing Responsive Statement of Position

1c. Business Phone

1d. Cell No.

1e. Fax No.

1f. E-Mail Address

1b. Address (Street and Number, City, State, and ZIP Code)

2. Identify all issues raised in the other party's Statement of Position that you dispute and describe the basis of your dispute:

a. EMPLOYER NAME/IDENTITY [Box 1a of Statement of Position Form NLRB-505 and Questionnaire on Commerce Information]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

b. JURISDICTION [Box 2 of Statement of Position Form NLRB-505 and Questionnaire on Commerce Information]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

c. APPROPRIATENESS OF UNIT [Boxes 3, 3a and 3b of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

d. INDIVIDUAL ELIGIBILITY [Box 4 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

e. BARS TO ELECTION [Box 5 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

f. ALL OTHER ISSUES [Box 6 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

g. ELECTION DETAILS [Boxes 8a, 8b, 8c, 8d, 8e, 8f, and 8g of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

Full Name and Title of Authorized Representative

Signature of Authorized Representative

Date

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

Please fill all necessary fields on the form PRIOR to digitally signing. To make changes after the form has been signed, right-click on the signature field and click "clear signature." Once complete, please sign the form.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 29
Two Metro Tech Center
Suite 5100
Brooklyn, NY 11201-3838

Agency Website: www.nlr.gov
Telephone: (718)330-7713
Fax: (718)330-7579



Download
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Mobile App

April 15, 2021

URGENT

vze15p8p9@verizon.net

Ron Brown, Vice President
Special Patrolman Benevolent Association
1707 Unionport Road
Bronx, NY 10462

Re: Children's Village
Case No. 29-RC-275629

Dear Mr. Brown:

The enclosed petition that you filed with the National Labor Relations Board (NLRB) has been assigned the above case number. This letter tells you how to contact the Board agent who will be handling this matter; explains your obligation to provide the originals of the showing of interest and the requirement that you complete and serve a Responsive Statement of Position form in response to each timely filed and served Statement(s) of Position; notifies you of a hearing; describes the employer's obligation to post and distribute a Notice of Petition for Election, complete a Statement of Position and provide a voter list; requests that you provide certain information; notifies you of your right to be represented; and discusses some of our procedures including how to submit documents to the NLRB.

Investigator: This petition will be investigated by Field Examiner Ioulia Fedorova whose telephone number is (718)765-6191. The Board agent will contact you shortly to discuss processing the petition. If you have any questions, please do not hesitate to call the Board agent. The Board agent may also contact you and the other party or parties to schedule a conference meeting or telephonic or video conference for some time before the close of business the day following receipt of the final Responsive Statement(s) of Position. This will give the parties sufficient time to determine if any issues can be resolved prior to hearing or if a hearing is necessary. If the agent is not available, you may contact Supervisory Field Examiner Kate Anderson whose telephone number is (718)765-6181. If appropriate, the NLRB attempts to schedule an election either by agreement of the parties or by holding a hearing and then directing an election.

Showing of Interest: If the Showing of Interest you provided in support of your petition was submitted electronically or by fax, the original documents which constitute the Showing of Interest containing handwritten signatures must be delivered to the Regional office within **2 business days**. If the originals are not received within that time the Region will dismiss your petition.

Notice of Hearing: Enclosed is a Notice of Representation Hearing to be conducted at **9:30 AM on Wednesday, May 5, 2021 via Video Conference**, if the parties do not voluntarily agree to an election. If a hearing is necessary, the hearing will run on consecutive days until concluded unless the regional director concludes that extraordinary circumstances warrant otherwise. Before the hearing begins, we will continue to explore potential areas of agreement with the parties in order to reach an election agreement and to eliminate or limit the costs associated with formal hearings.

Upon request of a party showing good cause, the regional director may postpone the hearing. A party desiring a postponement should make the request to the regional director in writing, set forth in detail the grounds for the request, and include the positions of the other parties regarding the postponement. E-Filing the request is required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Posting and Distribution of Notice: The Employer must post the enclosed Notice of Petition for Election by **Thursday, April 22, 2021** in conspicuous places, including all places where notices to employees are customarily posted. If it customarily communicates electronically with its employees in the petitioned-for unit, it must also distribute the notice electronically to them. The Employer must maintain the posting until the petition is dismissed or withdrawn or this notice is replaced by the Notice of Election. Failure to post or distribute the notice may be grounds for setting aside the election if proper and timely objections are filed.

Statement of Position: In accordance with Section 102.63(b) of the Board's Rules, the Employer is required to complete the enclosed Statement of Position form, have it signed by an authorized representative, and file a completed copy with any necessary attachments, with this office and serve it on all parties named in the petition by **noon Eastern Time on April, 27, 2021**. The Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the Employer contends that the proposed unit is inappropriate, it must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The Employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit.

Required Responsive Statement of Position (RSOP): In accordance with Section 102.63(b) of the Board's Rules, following timely filing and service of a Statement of Position, the petitioner is required to complete the enclosed Responsive Statement of Position form addressing issues raised in any Statement(s) of Position. The petitioner must file a complete, signed RSOP in response to all other parties' timely filed and served Statement of Position, with all required attachments, with this office and serve it on all parties named in the petition such that it is received by them by **noon Eastern Time on Friday, April 30, 2021**.

This form solicits information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. **This form must be e-Filed, but unlike other e-Filed documents, will not be timely if filed on**

the due date but after noon Eastern Time. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent named above.

Failure to Supply Information: Failure to supply the information requested by the RSOP form may preclude you from litigating issues under Section 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§ 102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

Voter List: If an election is held in this matter, the Employer must transmit to this office and to the other parties to the election, an alphabetized list of the full names and addresses of all eligible voters, including their shifts, job classifications, work locations, and other contact information including available personal email addresses and available personal home and cellular telephone numbers. Usually, the list must be furnished within 2 business days of the issuance of the Decision and Direction of Election or approval of an election agreement. The list must be electronically filed with the Region and served electronically on the other parties. To guard against potential abuse, this list may not be used for purposes other than the representation proceeding, NLRB proceedings arising from it or other related matters.

Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 days after the date when the Employer must file the voter list with the Regional Office. However, a petitioner and/or union entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483, which is available on the NLRB's website or from an NLRB office. A waiver will not be effective unless all parties who are entitled to the voter list agree to waive the same number of days.

Information Needed Now: Please submit to this office, as soon as possible, the following information needed to handle this matter:

- (a) The correct name of the Union as stated in its constitution or bylaws.
- (b) A copy of any existing or recently expired collective-bargaining agreements, and any amendments or extensions, or any recognition agreements covering any employees in the petitioned-for unit.
- (c) If potential voters will need notices or ballots translated into a language other than English, the names of those languages and dialects, if any.
- (d) The name and contact information for any other labor organization (union) claiming to represent or have an interest in any of the employees in the petitioned-for unit and for any employer who may be a joint employer of the employees in the proposed unit. Failure to disclose the existence of an interested party may delay the processing of the petition.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before the NLRB. In view of our policy of processing these cases expeditiously, if you wish to be represented, you should obtain representation promptly. Your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlr.gov, or from an NLRB office upon your request.

If someone contacts you about representing you in this case, please be assured that no organization or person seeking your business has any “inside knowledge” or favored relationship with the NLRB. Their knowledge regarding this matter was obtained only through access to information that must be made available to any member of the public under the Freedom of Information Act.

Procedures: Pursuant to Section 102.5 of the Board’s Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency’s web site (www.nlr.gov). You must e-file all documents electronically or provide a written statement explaining why electronic submission is not possible or feasible. Failure to comply with Section 102.5 will result in rejection of your submission. The Region will make its determinations solely based on the documents and evidence properly submitted. All evidence submitted electronically should be in the form in which it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the petition.

Information about the NLRB and our customer service standards is available on our website, www.nlr.gov, or from an NLRB office upon your request. We can provide assistance

for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathy Drew-King", is positioned above the typed name.

KATHY DREW-KING
Regional Director

Enclosures

1. Petition
2. Notice of Petition for Election (Form 5492)
3. Notice of Representation Hearing
4. Description of Procedures in Certification and Decertification Cases (Form 4812)
5. Statement of Position form and Commerce Questionnaire (Form 505)
6. Responsive Statement of Position (Form 506)



National Labor Relations Board



NOTICE OF PETITION FOR ELECTION

This notice is to inform employees that Special Patrolman Benevolent Association has filed a petition with the National Labor Relations Board (NLRB), a Federal agency, in Case 29-RC-275629 seeking an election to become certified as the representative of the employees of Children's Village in the unit set forth below:

Included: All full-time and regular part-time security guards. Excluded: All other employees

This notice also provides you with information about your basic rights under the National Labor Relations Act, the processing of the petition, and rules to keep NLRB elections fair and honest.

YOU HAVE THE RIGHT under Federal Law

- To self-organization
- To form, join, or assist labor organizations
- To bargain collectively through representatives of your own choosing
- To act together for the purposes of collective bargaining or other mutual aid or protection
- To refuse to do any or all of these things unless the union and employer, in a state where such agreements are permitted, enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustments).

PROCESSING THIS PETITION

Elections do not necessarily occur in all cases after a petition is filed. **NO FINAL DECISIONS HAVE BEEN MADE YET** regarding the appropriateness of the proposed unit or whether an election will be held in this matter. If appropriate, the NLRB will first see if the parties will enter into an election agreement that specifies the method, date, time, and location of an election and the unit of employees eligible to vote. If the parties do not enter into an election agreement, usually a hearing is held to receive evidence on the appropriateness of the unit and other issues in dispute. After a hearing, an election may be directed by the NLRB, if appropriate.

IF AN ELECTION IS HELD, it will be conducted by the NLRB by secret ballot and Notices of Election will be posted before the election giving complete details for voting.

ELECTION RULES

The NLRB applies rules that are intended to keep its elections fair and honest and that result in a free choice. If agents of any party act in such a way as to interfere with your right to a free

election, the election can be set aside by the NLRB. Where appropriate the NLRB provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with employees' rights and may result in setting aside the election:

- **Threatening loss of jobs or benefits by an employer or a union**
- **Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises**
- **An employer firing employees to discourage or encourage union activity or a union causing them to be fired to encourage union activity**
- **Making campaign speeches to assembled groups of employees on company time, where attendance is mandatory, within the 24-hour period before the polls for the election first open or, if the election is conducted by mail, from the time and date the ballots are scheduled to be sent out by the Region until the time and date set for their return**
- **Incitement by either an employer or a union of racial or religious prejudice by inflammatory appeals**
- **Threatening physical force or violence to employees by a union or an employer to influence their votes**

Please be assured that IF AN ELECTION IS HELD, every effort will be made to protect your right to a free choice under the law. Improper conduct will not be permitted. All parties are expected to cooperate fully with the NLRB in maintaining basic principles of a fair election as required by law. The NLRB as an agency of the United States Government does not endorse any choice in the election.

For additional information about the processing of petitions, go to www.nlr.gov or contact the NLRB at (718)330-7713.

THIS IS AN OFFICIAL GOVERNMENT NOTICE AND MUST NOT BE DEFACED BY ANYONE. IT MUST REMAIN POSTED WITH ALL PAGES SIMULTANEOUSLY VISIBLE UNTIL REPLACED BY THE NOTICE OF ELECTION OR THE PETITION IS DISMISSED OR WITHDRAWN.



National Labor Relations Board





**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**



Children's Village Employer and Special Patrolman Benevolent Association Petitioner	Case 29-RC-275629
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NOTICE OF REPRESENTATION HEARING

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

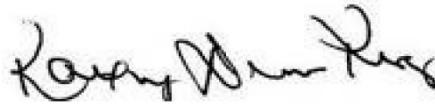
YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 9:30 AM on **Wednesday, May 5, 2021** and on consecutive days thereafter until concluded, via Video Conference, a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony. The parties will receive an invitation to the video conference hearing in a separate communication.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.63(b) of the Board's Rules and Regulations, Children's Village must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that is received by them by no later than **noon** Eastern time on April 27, 2021. Following timely filing and service of a Statement of Position by Children's Village, the Petitioner must complete its Responsive Statement of Position(s) responding to the issues raised in the Employer's and/or Union's Statement of Position and file them and all attachments with the Regional Director and serve them on the parties named in the petition such they are received by them no later than **noon** Eastern on **Friday, April 30, 2021**.

Pursuant to Section 102.5 of the Board's Rules and Regulations, all documents filed in cases before the Agency must be filed by electronically submitting (E-Filing) through the Agency's website (www.nlrb.gov), unless the party filing the document does not have access to the means for filing electronically or filing electronically would impose an undue burden. Documents filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Detailed instructions for using the NLRB's E-Filing system can be found in the [E-Filing System User Guide](#)

The Statement of Position and Responsive Statement of Position must be E-Filed but, unlike other E-Filed documents, must be filed by **noon** Eastern on the due date in order to be timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position and Responsive Statement of Position are not required to be filed. If an election agreement is signed by all parties and returned to the Regional office after the due date of the Statement of Position but before the due date of the Responsive Statement of Position, the Responsive Statement of Position is not required to be filed.

Dated: April 15, 2021



KATHY DREW-KING
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 29
Two Metro Tech Center
Suite 5100
Brooklyn, NY 11201-3838

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

<p>Children's Village</p> <p style="text-align:center">Employer</p> <p style="text-align:center">and</p> <p>Special Patrolman Benevolent Association</p> <p style="text-align:center">Petitioner</p>	<p>Case 29-RC-275629</p>
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AFFIDAVIT OF SERVICE OF: Petition dated April 13, 2021, Notice of Representation Hearing dated April 15, 2021, Description of Procedures in Certification and Decertification Cases (Form NLRB-4812), Notice of Petition for Election, and Statement of Position Form (Form NLRB-505).

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on April 15, 2021, I served the above documents by **electronic mail and regular mail** upon the following person, addressed to them at the following address:

Ron Brown, Vice President
Special Patrolman Benevolent Association
1707 Unionport Road
Bronx, NY 10462
vze15p8p9@verizon.net

April 15, 2021
Date

Sharon Marfan, Designated Agent of NLRB
Name

/s/ Sharon Marfan
Signature

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

**DESCRIPTION OF REPRESENTATION CASE PROCEDURES
IN CERTIFICATION AND DECERTIFICATION CASES**

The National Labor Relations Act grants employees the right to bargain collectively through representatives of their own choosing and to refrain from such activity. A party may file an RC, RD or RM petition with the National Labor Relations Board (NLRB) to conduct a secret ballot election to determine whether a representative will represent, or continue to represent, a unit of employees. An **RC** petition is generally filed by a union that desires to be certified as the bargaining representative. An **RD** petition is filed by employees who seek to remove the currently recognized union as the bargaining representative. An **RM** petition is filed by an employer who seeks an election because one or more individuals or unions have sought recognition as the bargaining representative, or based on a reasonable belief supported by objective considerations that the currently recognized union has lost its majority status. This form generally describes representation case procedures in RC, RD and RM cases, also referred to as certification and decertification cases.

Right to be Represented – Any party to a case with the NLRB has the right to be represented by an attorney or other representative in any proceeding before the NLRB. A party wishing to have a representative appear on its behalf should have the representative complete a Notice of Appearance (Form NLRB-4701), and E-File it at www.nlr.gov or forward it to the NLRB Regional Office handling the petition as soon as possible.

Filing and Service of Petition – A party filing an RC, RD or RM petition is required to serve a copy of its petition on the parties named in the petition along with this form and the Statement of Position form. The petitioner files the petition with the NLRB, together with (1) a certificate showing service of these documents on the other parties named in the petition, and (2) a showing of interest to support the petition. The showing of interest is not served on the other parties.

Notice of Hearing – After a petition in a certification or decertification case is filed with the NLRB, the NLRB reviews the petition, certificate of service, and the required showing of interest for sufficiency, assigns the petition a case number, and promptly sends letters to the parties notifying them of the Board agent who will be handling the case. In most cases, the letters include a Notice of Representation Hearing. Except in cases presenting unusually complex issues, this pre-election hearing is set for a date 14 business days (excluding weekends and federal holidays) from the date of service of the notice of hearing. Once the hearing begins, it will continue day to day until completed absent extraordinary circumstances. The Notice of Representation Hearing also sets the due date for filing and serving the Statement(s) of Position and the Responsive Statement of Position(s). Included with the Notice of Representation Hearing are the following: (1) copy of the petition, (2) this form, (3) Statement of Position for non-petitioning parties, (4) petitioner's Responsive Statement of Position, (5) Notice of Petition for Election, and (6) letter advising how to contact the Board agent who will be handling the case and discussing those documents.

Hearing Postponement: Requests to postpone the hearing are not routinely granted, but the regional director may postpone the hearing for good cause. A party wishing to request a postponement should make the request in writing and set forth in detail the grounds for the request. The request should include the positions of the other parties regarding the postponement. The request must be filed electronically ("E-Filed") on the Agency's website (www.nlr.gov) by following the instructions on the website. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Statement of Position Form and List(s) of Employees – The Statement of Position form solicits commerce and other information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. In an **RC** or **RD** case, as part of its Statement of Position form, the employer also provides a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. If the employer contends that the proposed unit is not appropriate, the employer must separately list the same information for all individuals that the employer contends must be added to the proposed unit to make it an appropriate unit, and must further indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional

form for the list is provided on the NLRB website at www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx

Ordinarily the Statement of Position must be filed with the Regional Office and served on the other parties such that it is received by them by noon 8 business days from the issuance of the Notice of Hearing. The regional director may postpone the due date for filing and serving the Statement of Position for good cause. The Statement of Position form must be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Statement of Position requirement are discussed on the following page under the heading "Preclusion." A request to postpone the hearing will not automatically be treated as a request for an extension of the Statement of Position due date. If a party wishes to request both a postponement of the hearing and a postponement of the Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

Responsive Statement of Position – Petitioner's Responsive Statement(s) of Position solicits a response to the Statement(s) of Position filed by the other parties and further facilitates entry into election agreements or streamlines the preelection hearing. A petitioner must file a Responsive Statement of Position in response to each party's Statement of Position addressing each issue in each Statement of Position(s), if desired. In the case of an RM petition, the employer-petitioner must also provide commerce information and file and serve a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. Ordinarily, the Responsive Statement of Position must be electronically filed with the Regional Office and served on the other parties such that it is received by noon 3 business days prior to the hearing. The regional director may postpone the due date for filing and serving the Responsive Statement of Position for good cause. The Responsive Statement of Position form must be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Responsive Statement of Position requirement are discussed on the following page under the heading "Preclusion." A request to postpone the hearing will not automatically be treated as a request for an extension of the Responsive Statement of Position due date. If a party wishes to request both a postponement of the hearing and a Postponement of the Responsive Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

Posting and Distribution of Notice of Petition for Election – Within 5 business days after service of the notice of hearing, the employer must post the Notice of Petition for Election in conspicuous places, including all places where notices to employees are customarily posted, and must also distribute it electronically to the employees in the petitioned-for unit if the employer customarily communicates with these employees electronically. The employer must maintain the posting until the petition is dismissed or withdrawn, or the Notice of Petition for Election is replaced by the Notice of Election. The employer's failure properly to post or distribute the Notice of Petition for Election may be grounds for setting aside the election if proper and timely objections are filed.

Election Agreements – Elections can occur either by agreement of the parties or by direction of the regional director or the Board. Three types of agreements are available: (1) a Consent Election Agreement (Form NLRB-651); (2) a Stipulated Election Agreement (Form NLRB-652); and (3) a Full Consent Agreement (Form NLRB-5509). In the Consent Election Agreement and the Stipulated Election Agreement, the parties agree on an appropriate unit and the method, date, time, and place of a secret ballot election that will be conducted by an NLRB agent. In the Consent Agreement, the parties also agree that post-election matters (election objections or determinative challenged ballots) will be resolved with finality by the regional director; whereas in the Stipulated Election Agreement, the parties agree that they may request Board review of the regional director's post-election determinations. A Full Consent Agreement provides that the regional director will make final determinations regarding all pre-election and post-election issues.

Hearing Cancellation Based on Agreement of the Parties – The issuance of the Notice of Representation Hearing does not mean that the matter cannot be resolved by agreement of the parties. On the contrary, the NLRB encourages prompt voluntary adjustments and the Board agent assigned to the case will work with the parties to enter into an election agreement, so the parties can avoid the time and expense of participating in a hearing.

Hearing – A hearing will be held unless the parties enter into an election agreement approved by the regional director or the petition is dismissed or withdrawn.

Purpose of Hearing: The primary purpose of a pre-election hearing is to determine if a question of representation exists. A question of representation exists if a proper petition has been filed concerning a unit

appropriate for the purpose of collective bargaining or, in the case of a decertification petition, concerning a unit in which a labor organization has been certified or is being currently recognized by the employer as the bargaining representative.

Issues at Hearing: Issues that might be litigated at the pre-election hearing include: jurisdiction; labor organization status; bars to elections; unit appropriateness; expanding and contracting unit issues; inclusion of professional employees with nonprofessional employees; seasonal operation; potential mixed guard/non-guard unit; and eligibility formulas. At the hearing, the timely filed Statement of Position and Responsive Statement of Position(s) will be received into evidence. The hearing officer will not receive evidence concerning any issue as to which the parties have not taken adverse positions, except for evidence regarding the Board's jurisdiction over the employer and evidence concerning any issue, such as the appropriateness of the proposed unit, as to which the regional director determines that record evidence is necessary.

Preclusion: At the hearing, a party will be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or Responsive Statement of Position(s) or to place in dispute in timely response to another party's Statement of Position or response, except that no party will be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. As set forth in §102.66(d) of the Board's rules, if the employer fails to timely furnish the lists of employees, the employer will be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

Conduct of Hearing: If held, the hearing is usually open to the public and will be conducted by a hearing officer of the NLRB. Any party has the right to appear at any hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record evidence of the significant facts that support the party's contentions and are relevant to the existence of a question of representation. The hearing officer also has the power to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence. Witnesses will be examined orally under oath. The rules of evidence prevailing in courts of law or equity shall not be controlling. Parties appearing at any hearing who have or whose witnesses have disabilities falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, should notify the regional director as soon as possible and request the necessary assistance.

Official Record: An official reporter will make the only official transcript of the proceedings and all citations in briefs or arguments must refer to the official record. (Copies of exhibits should be supplied to the hearing officer and other parties at the time the exhibit is offered in evidence.) All statements made at the hearing will be recorded by the official reporter while the hearing is on the record. If a party wishes to make off-the-record remarks, requests to make such remarks should be directed to the hearing officer and not to the official reporter. After the close of the hearing, any request for corrections to the record, either by stipulation or motion, should be forwarded to the regional director.

Motions and Objections: All motions must be in writing unless stated orally on the record at the hearing and must briefly state the relief sought and the grounds for the motion. A copy of any motion must be served immediately on the other parties to the proceeding. Motions made during the hearing are filed with the hearing officer. All other motions are filed with the regional director, except that motions made after the transfer of the record to the Board are filed with the Board. If not E-Filed, an original and two copies of written motions shall be filed. Statements of reasons in support of motions or objections should be as concise as possible. Objections shall not be deemed waived by further participation in the hearing. On appropriate request, objections may be permitted to stand to an entire line of questioning. Automatic exceptions will be allowed to all adverse rulings.

Election Details: Prior to the close of the hearing the hearing officer will: (1) solicit the parties' positions (but will not permit litigation) on the type, date(s), time(s), and location(s) of the election and the eligibility period; (2) solicit the name, address, email address, facsimile number, and phone number of the employer's on-site representative to whom the regional director should transmit the Notice of Election if an election is directed; (3) inform the parties that the regional director will issue a decision as soon as practicable and will immediately transmit the document to the parties and their designated representatives by email, facsimile, or by overnight mail (if neither an email address nor facsimile number was provided); and (4) inform the parties of their obligations if the director directs an election and of the time for complying with those obligations.

Oral Argument and Briefs: Upon request, any party is entitled to a reasonable period at the close of the hearing for oral argument, which will be included in the official transcript of the hearing. At any time before the close of the hearing, any party may file a memorandum addressing relevant issues or points of law. Post-hearing briefs shall be due within 5 business days of the close of the hearing. The hearing officer may allow up to 10 additional business days for such briefs prior to the close of hearing and for good cause. If filed, copies of the memorandum or brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the memorandum or brief. No reply brief may be filed except upon special leave of the regional director. Briefs including electronic documents, filed with the Regional Director must be formatted as double-spaced in an 8½ by 11 inch format and must be e-filed through the Board's website, www.nlr.gov.

Regional Director Decision - After the hearing, the regional director issues a decision directing an election, dismissing the petition or reopening the hearing. A request for review of the regional director's pre-election decision may be filed with the Board at any time after issuance of the decision until 10 business days after a final disposition of the proceeding by the regional director. Accordingly, a party need not file a request for review before the election in order to preserve its right to contest that decision after the election. Instead, a party can wait to see whether the election results have mooted the basis of an appeal. The Board will grant a request for review only where compelling reasons exist therefor.

Voter List – The employer must provide to the regional director and the parties named in the election agreement or direction of election a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular ("cell") telephone numbers) of all eligible voters. (In construction industry elections, unless the parties stipulate to the contrary, also eligible to vote are all employees in the unit who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.) The employer must also include in a separate section of the voter list the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge or those individuals who, according to the direction of election, will be permitted to vote subject to challenge. The list of names must be alphabetized (overall or by department) and be in the same Microsoft Word file (or Microsoft Word compatible file) format as the initial lists provided with the Statement of Position form unless the parties agree to a different format or the employer certifies that it does not possess the capacity to produce the list in the required form. When feasible, the list must be filed electronically with the regional director and served electronically on the other parties named in the agreement or direction. To be timely filed and served, the voter list must be received by the regional director and the parties named in the agreement or direction respectively within 2 business days after the approval of the agreement or issuance of the direction of elections unless a longer time is specified in the agreement or direction. A certificate of service on all parties must be filed with the regional director when the voter list is filed. The employer's failure to file or serve the list within the specified time or in proper format shall be grounds for setting aside the election whenever proper and timely objections are filed. The parties shall not use the list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

Waiver of Time to Use Voter List – Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 calendar days after the date when the employer must file the voter list with the Regional Office. However, the parties entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483. A waiver will not be effective unless all parties who are entitled to the list agree to waive the same number of days.

Election – Information about the election, requirements to post and distribute the Notice of Election, and possible proceedings after the election is available from the Regional Office and will be provided to the parties when the Notice of Election is sent to the parties.

Withdrawal or Dismissal – If it is determined that the NLRB does not have jurisdiction or that other criteria for proceeding to an election are not met, the petitioner is offered an opportunity to withdraw the petition. If the petitioner does not withdraw the petition, the regional director will dismiss the petition and advise the petitioner of the reason for the dismissal and of the right to appeal to the Board.

REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A STATEMENT OF POSITION FORM

Completing and Filing this Form: The Notice of Hearing indicates which parties are responsible for completing the form. If you are required to complete the form, you must have it signed by an authorized representative and file a completed copy (including all attachments) with the RD and serve copies on all parties named in the petition by the date and time established for its submission. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You must EFile your Statement of Position at www.nlrb.gov, but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed.**

Note: Non-employer parties who complete this Statement of Position are NOT required to complete items 8f and 8g of the form, or to provide a commerce questionnaire or the lists described in item 7.

Required Lists: The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx](http://www.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional%20Forms%20for%20Voter%20List.docx).

Consequences of Failure to Supply Information: Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
STATEMENT OF POSITION

DO NOT WRITE IN THIS SPACE

Case No.
29-RC-275629

Date Filed
April 14, 2021

INSTRUCTIONS: Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.

Note: Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7.

1a. Full name of party filing Statement of Position		1c. Business Phone:	1e. Fax No.:
1b. Address (Street and number, city, state, and ZIP code)		1d. Cell No.:	1f. e-Mail Address
2. Do you agree that the NLRB has jurisdiction over the Employer in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No (A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)			
3. Do you agree that the proposed unit is appropriate? <input type="checkbox"/> Yes <input type="checkbox"/> No (If not, answer 3a and 3b.)			
a. State the basis for your contention that the proposed unit is not appropriate. (If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards.)			
b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit.			
Added		Excluded	
4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility.			
5. Is there a bar to conducting an election in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, state the basis for your position.			
6. Describe all other issues you intend to raise at the pre-election hearing.			
7. The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx . (a) A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B) (b) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be <i>added</i> to the proposed unit, if any to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of any individuals it contends must be <i>excluded</i> from the proposed unit to make it an appropriate unit. (Attachment D)			
8a. State your position with respect to the details of any election that may be conducted in this matter. Type: <input type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail			
8b. Date(s)	8c. Time(s)	8d. Location(s)	
8e. Eligibility Period (e.g. special eligibility formula)	8f. Last Payroll Period Ending Date	8g. Length of payroll period <input type="checkbox"/> Weekly <input type="checkbox"/> Biweekly <input type="checkbox"/> Other (specify length)	
9. Representative who will accept service of all papers for purposes of the representation proceeding			
9a. Full name and title of authorized representative	9b. Signature of authorized representative		9c. Date
9d. Address (Street and number, city, state, and ZIP code)			9e. e-Mail Address
9f. Business Phone No.:		9g. Fax No.	9h. Cell No.

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME

CASE NUMBER

29-RC-275629

1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)

2. TYPE OF ENTITY

☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify)

3. IF A CORPORATION or LLC

A. STATE OF INCORPORATION
OR FORMATION

B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS

5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR

6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).

7A. PRINCIPAL LOCATION:

7B. BRANCH LOCATIONS:

8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

A. TOTAL:

B. AT THE ADDRESS INVOLVED IN THIS MATTER:

9. DURING THE MOST RECENT (Check the appropriate box): ☐ CALENDAR ☐ 12 MONTHS or ☐ FISCAL YEAR (FY DATES)

YES

NO

A. Did you **provide services** valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value.
\$B. If you answered no to 9A, did you **provide services** valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided. \$C. If you answered no to 9A and 9B, did you **provide services** valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$D. Did you **sell goods** valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$E. If you answered no to 9D, did you **sell goods** valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$F. Did you **purchase and receive goods** valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$G. Did you **purchase and receive goods** valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$H. **Gross Revenues** from all sales or performance of services (Check the largest amount):☐ \$100,000 ☐ \$250,000 ☐ \$500,000 ☐ \$1,000,000 or more If less than \$100,000, indicate amount.

I. Did you begin operations within the last 12 months? If yes, specify date:

10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?

☐ YES ☐ NO (If yes, name and address of association or group).

11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME

TITLE

E-MAIL ADDRESS

TEL. NUMBER

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)

SIGNATURE

E-MAIL ADDRESS

DATE

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A RESPONSIVE STATEMENT OF POSITION FORM

Completing and Filing this Form: For **RC and RD petitions**, the Petitioner is required to complete this form in response to each timely filed and served Statement of Position filed by another party. For **RM petitions**, the Employer-Petitioner must complete a Responsive Statement of Position form and submit the list described below. In accordance with Section 102.63(b) of the Board's Rules, if you are required to complete the form, you must have it signed by an authorized representative, and file a completed copy with any necessary attachments, with this office and serve it on all parties named in the petition responding to the issues raised in another party's Statement of Position, such that it is received no later than noon three business days before the date of the hearing. A separate form must be completed for each timely filed and properly served Statement of Position you receive. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You must E-File your Responsive Statement of Position at www.NLRB.gov, but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed. Note that if you are completing this form as a PDF downloaded from www.NLRB.gov, the form will lock upon signature and no further editing may be made.**

Required List: In addition to responding to the issues raised in another party's Statement of Position, if any, the Employer-Petitioner in an RM case is required to file and serve on the parties a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. This list must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the list in the required form, the list must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional%20Forms%20for%20Voter%20List.docx)

Consequences of Failure to Submit a Responsive Statement of Position: Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
RESPONSIVE STATEMENT OF POSITION – RC, RD or RM PETITION

DO NOT WRITE IN THIS SPACE

Case No.
29-RC-275629

Date Filed
April 14, 2021

INSTRUCTIONS: If a party has submitted and served on you a timely Statement of Position to an RC, RD or RM petition, the Petitioner must submit this Responsive Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and any attachments on each party named in the petition in this case such that it is received by noon local time, three business days prior to the hearing date specified in the Notice of Hearing. A separate form must be completed for each timely filed and properly served Statement of Position received by the Petitioner. The Petitioner-Employer in a RM case is required to file this Responsive Statement of Position and include an appropriate employee list without regard to whether another party has filed a Statement of Position.

This Responsive Statement of Position is filed by the Petitioner in response to a Statement of Position received from the following party:

The Employer

An Intervenor/Union

1a. Full Name of Party Filing Responsive Statement of Position

1c. Business Phone

1d. Cell No.

1e. Fax No.

1f. E-Mail Address

1b. Address (Street and Number, City, State, and ZIP Code)

2. Identify all issues raised in the other party's Statement of Position that you dispute and describe the basis of your dispute:

a. EMPLOYER NAME/IDENTITY [Box 1a of Statement of Position Form NLRB-505 and Questionnaire on Commerce Information]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

b. JURISDICTION [Box 2 of Statement of Position Form NLRB-505 and Questionnaire on Commerce Information]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

c. APPROPRIATENESS OF UNIT [Boxes 3, 3a and 3b of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

d. INDIVIDUAL ELIGIBILITY [Box 4 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

e. BARS TO ELECTION [Box 5 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

f. ALL OTHER ISSUES [Box 6 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

g. ELECTION DETAILS [Boxes 8a, 8b, 8c, 8d, 8e, 8f, and 8g of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

Full Name and Title of Authorized Representative

Signature of Authorized Representative

Date

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

Please fill all necessary fields on the form PRIOR to digitally signing. To make changes after the form has been signed, right-click on the signature field and click "clear signature." Once complete, please sign the form.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 29
Two Metro Tech Center
Suite 5100
Brooklyn, NY 11201-3838

Agency Website: www.nlr.gov
Telephone: (718)330-7713
Fax: (718)330-7579



Download
NLRB
Mobile App

April 15, 2021

URGENT

DC37
55 Water Street
Manhattan, NY 10041-0004

Fax: (212) 815-1321

Re: Children's Village
Case No. 29-RC-275629

Dear Sir or Madam:

Enclosed is a copy of a petition that Special Patrolman Benevolent Association filed with the National Labor Relations Board (NLRB) regarding representation of certain of Children's Village employees. This petition is being sent to you because our investigation has disclosed that your union may have an interest in this proceeding. This letter tells you how to contact the Board agent who will be handling this matter, explains your obligation to request intervention and provide a showing of interest, notifies you of a hearing, describes the employer's obligation to post and distribute a Notice of Petition for Election and complete a Statement of Position, the Petitioner's requirement to complete and serve Responsive Statement(s) of Position Form(s), informs you of your right to be represented, and discusses some of our procedures including how to submit documents to the NLRB.

Investigator: This petition will be investigated by Field Examiner Ioulia Fedorova whose telephone number is (718)765-6191. If you choose to intervene, the Board agent will contact you shortly to discuss processing the petition. If you have any questions, please do not hesitate to call the Board agent. The Board agent may also contact you and the other party or parties to schedule a conference meeting or telephonic or video conference for some time before the close of business the day following receipt of the final Responsive Statement(s) of Position. This will give the parties sufficient time to determine if any issues can be resolved prior to hearing or if a hearing is necessary. If the agent is not available, you may contact Supervisory Field Examiner Kate Anderson whose telephone number is (718)765-6181. If appropriate, the NLRB attempts to schedule an election either by agreement of the parties or by holding a hearing and then directing an election.

Procedure for Intervention and Showing of Interest: To become a party to this case, you must make a request to intervene in accordance with Section 102.65 of the National Labor Relations Board Rules and Regulations. The request should state the grounds upon which you claim to have an interest in the proceeding. You may make the request in writing by filing it

with the Regional Director and serving a copy on the other parties to the proceeding. You may also orally request to intervene at the hearing described below. At the time you request to intervene, you should submit evidence of a showing of interest among the involved employees. This showing of interest may be any one of the following:

- (1) A current or recently expired collective-bargaining agreement with the Employer covering some of the employees involved;
- (2) Authorization cards or a list of signatures designating your union as the signers' agent for collective-bargaining purposes;
- (3) Records showing involved employees who are members of your union; or
- (4) Certification or recognition as the currently recognized bargaining agent of the employees involved.

You should submit your evidence of interest within 48 hours after having been given notice of this proceeding. The timeliness of your submission may affect your right to participate in further processing of the petition. See Sections 11024.2 and 11026.2 of the Board's Casehandling Manual to review the detailed circumstances under which you may or may not be permitted to intervene.

Required Statement of Position: If you decide to intervene and submit a showing of interest indicating support of 10 percent or more of the proposed unit, you are required to complete a Statement of Position by **noon Eastern Time on April 27, 2021**. This form solicits information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. **This form must be E-Filed but unlike other E-Filed documents will *not* be timely if filed on the due date but after noon Eastern Time.** If you have questions about this form or would like assistance in filling out this form, please contact the Board agent named above.

Failure to supply the information requested by this form may preclude you from litigating issues under Section 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall

also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§ 102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

Responsive Statement of Position: In accordance with Section 102.63(b) of the Board's Rules, following timely filing and service of an employer's and/or intervenor's Statement of Position, the petitioner is required to complete the enclosed Responsive Statement of Position form addressing the issues raised in each of the employer's and/or intervenor's Statement of Position. The petitioner must file a completed, signed copy with any necessary attachments for each timely filed and served Statement of Position with this office and serve it on all parties named in the petition, such that it is received no later than **noon Eastern Time on Friday, April 30, 2021.**

Notice of Hearing: Enclosed is a Notice of Representation Hearing to be conducted at **9:30 AM on Wednesday, May 5, 2021 via Video Conference**, if the parties do not voluntarily agree to an election. If a hearing is necessary, the hearing will run on consecutive days until concluded unless the regional director concludes that extraordinary circumstances warrant otherwise. Before the hearing begins, the NLRB will continue to explore potential areas of agreement with the parties in order to reach an election agreement and to eliminate or limit the costs associated with formal hearings.

Upon request of a party showing good cause, the regional director may postpone the hearing. A party desiring a postponement should make the request to the regional director in writing, set forth in detail the grounds for the request, and include the positions of the other parties regarding the postponement. E-Filing the request is required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Posting and Distribution of Notice: The Employer must post the enclosed Notice of Petition for Election by **Thursday, April 22, 2021** in conspicuous places, including all places where notices to employees are customarily posted. If it customarily communicates electronically with its employees in the petitioned-for unit, it must also distribute the notice electronically to them. The Employer must maintain the posting until the petition is dismissed or withdrawn or this notice is replaced by the Notice of Election. Failure to post or distribute the notice may be grounds for setting aside the election if proper and timely objections are filed.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before the NLRB. In view of our policy of processing these cases expeditiously, if you wish to be represented, you should obtain representation promptly. Your representative must notify us in writing of this fact as soon as possible by completing Form

NLRB-4701, Notice of Appearance. This form is available on our website, www.nlr.gov, or from an NLRB office upon your request.

If someone contacts you about representing you in this case, please be assured that no organization or person seeking your business has any “inside knowledge” or favored relationship with the NLRB. Their knowledge regarding this matter was obtained only through access to information that must be made available to any member of the public under the Freedom of Information Act.

Procedures: Pursuant to Section 102.5 of the Board’s Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency’s web site (www.nlr.gov). You must e-file all documents electronically or provide a written statement explaining why electronic submission is not possible or feasible. Failure to comply with Section 102.5 will result in rejection of your submission. The Region will make its determinations solely based on the documents and evidence properly submitted. All evidence submitted electronically should be in the form in which it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the petition.

Information about the NLRB and our customer service standards is available on our website, www.nlr.gov, or from an NLRB office upon your request. We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,



KATHY DREW-KING
Regional Director

Enclosures

1. Petition
2. Notice of Petition for Election (Form 5492)
3. Notice of Representation Hearing
4. Description of Procedures in Certification and Decertification Cases (Form 4812)
5. Statement of Position form and Commerce Questionnaire (Form 505)
6. Responsive Statement of Position (Form 506)



National Labor Relations Board



NOTICE OF PETITION FOR ELECTION

This notice is to inform employees that Special Patrolman Benevolent Association has filed a petition with the National Labor Relations Board (NLRB), a Federal agency, in Case 29-RC-275629 seeking an election to become certified as the representative of the employees of Children's Village in the unit set forth below:

Included: All full-time and regular part-time security guards. Excluded: All other employees

This notice also provides you with information about your basic rights under the National Labor Relations Act, the processing of the petition, and rules to keep NLRB elections fair and honest.

YOU HAVE THE RIGHT under Federal Law

- To self-organization
- To form, join, or assist labor organizations
- To bargain collectively through representatives of your own choosing
- To act together for the purposes of collective bargaining or other mutual aid or protection
- To refuse to do any or all of these things unless the union and employer, in a state where such agreements are permitted, enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustments).

PROCESSING THIS PETITION

Elections do not necessarily occur in all cases after a petition is filed. **NO FINAL DECISIONS HAVE BEEN MADE YET** regarding the appropriateness of the proposed unit or whether an election will be held in this matter. If appropriate, the NLRB will first see if the parties will enter into an election agreement that specifies the method, date, time, and location of an election and the unit of employees eligible to vote. If the parties do not enter into an election agreement, usually a hearing is held to receive evidence on the appropriateness of the unit and other issues in dispute. After a hearing, an election may be directed by the NLRB, if appropriate.

IF AN ELECTION IS HELD, it will be conducted by the NLRB by secret ballot and Notices of Election will be posted before the election giving complete details for voting.

ELECTION RULES

The NLRB applies rules that are intended to keep its elections fair and honest and that result in a free choice. If agents of any party act in such a way as to interfere with your right to a free

election, the election can be set aside by the NLRB. Where appropriate the NLRB provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with employees' rights and may result in setting aside the election:

- **Threatening loss of jobs or benefits by an employer or a union**
- **Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises**
- **An employer firing employees to discourage or encourage union activity or a union causing them to be fired to encourage union activity**
- **Making campaign speeches to assembled groups of employees on company time, where attendance is mandatory, within the 24-hour period before the polls for the election first open or, if the election is conducted by mail, from the time and date the ballots are scheduled to be sent out by the Region until the time and date set for their return**
- **Incitement by either an employer or a union of racial or religious prejudice by inflammatory appeals**
- **Threatening physical force or violence to employees by a union or an employer to influence their votes**

Please be assured that IF AN ELECTION IS HELD, every effort will be made to protect your right to a free choice under the law. Improper conduct will not be permitted. All parties are expected to cooperate fully with the NLRB in maintaining basic principles of a fair election as required by law. The NLRB as an agency of the United States Government does not endorse any choice in the election.

For additional information about the processing of petitions, go to www.nlr.gov or contact the NLRB at (718)330-7713.

THIS IS AN OFFICIAL GOVERNMENT NOTICE AND MUST NOT BE DEFACED BY ANYONE. IT MUST REMAIN POSTED WITH ALL PAGES SIMULTANEOUSLY VISIBLE UNTIL REPLACED BY THE NOTICE OF ELECTION OR THE PETITION IS DISMISSED OR WITHDRAWN.



National Labor Relations Board





**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**



Children's Village Employer and Special Patrolman Benevolent Association Petitioner	Case 29-RC-275629
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NOTICE OF REPRESENTATION HEARING

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

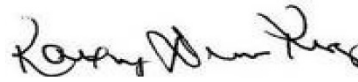
YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 9:30 AM on **Wednesday, May 5, 2021** and on consecutive days thereafter until concluded, via Video Conference, a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony. The parties will received an invitation to the video conference hearing in a separate communication.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.63(b) of the Board's Rules and Regulations, Children's Village must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that is received by them by no later than **noon** Eastern time on April 27, 2021. Following timely filing and service of a Statement of Position by Children's Village, the Petitioner must complete its Responsive Statement of Position(s) responding to the issues raised in the Employer's and/or Union's Statement of Position and file them and all attachments with the Regional Director and serve them on the parties named in the petition such they are received by them no later than **noon** Eastern on **Friday, April 30, 2021**.

Pursuant to Section 102.5 of the Board's Rules and Regulations, all documents filed in cases before the Agency must be filed by electronically submitting (E-Filing) through the Agency's website (www.nlrb.gov), unless the party filing the document does not have access to the means for filing electronically or filing electronically would impose an undue burden. Documents filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Detailed instructions for using the NLRB's E-Filing system can be found in the [E-Filing System User Guide](#)

The Statement of Position and Responsive Statement of Position must be E-Filed but, unlike other E-Filed documents, must be filed by **noon** Eastern on the due date in order to be timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position and Responsive Statement of Position are not required to be filed. If an election agreement is signed by all parties and returned to the Regional office after the due date of the Statement of Position but before the due date of the Responsive Statement of Position, the Responsive Statement of Position is not required to be filed.

Dated: April 15, 2021



KATHY DREW-KING
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 29
Two Metro Tech Center
Suite 5100
Brooklyn, NY 11201-3838

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

Children's Village Employer and Special Patrolman Benevolent Association Petitioner	Case 29-RC-275629
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AFFIDAVIT OF SERVICE OF: Petition dated April 13, 2021, Notice of Representation Hearing dated April 15, 2021, Description of Procedures in Certification and Decertification Cases (Form NLRB-4812), Notice of Petition for Election, and Statement of Position Form (Form NLRB-505).

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on April 15, 2021, I served the above documents by **regular mail and fax** upon the following person, addressed to them at the following address

DC37
55 Water Street
Manhattan, NY 10041-0004
Fax: (212) 815-1321

April 15, 2021

Date

Sharon Marfan, Designated Agent of NLRB

Name

/s/ Sharon Marfan

Signature

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

**DESCRIPTION OF REPRESENTATION CASE PROCEDURES
IN CERTIFICATION AND DECERTIFICATION CASES**

The National Labor Relations Act grants employees the right to bargain collectively through representatives of their own choosing and to refrain from such activity. A party may file an RC, RD or RM petition with the National Labor Relations Board (NLRB) to conduct a secret ballot election to determine whether a representative will represent, or continue to represent, a unit of employees. An **RC** petition is generally filed by a union that desires to be certified as the bargaining representative. An **RD** petition is filed by employees who seek to remove the currently recognized union as the bargaining representative. An **RM** petition is filed by an employer who seeks an election because one or more individuals or unions have sought recognition as the bargaining representative, or based on a reasonable belief supported by objective considerations that the currently recognized union has lost its majority status. This form generally describes representation case procedures in RC, RD and RM cases, also referred to as certification and decertification cases.

Right to be Represented – Any party to a case with the NLRB has the right to be represented by an attorney or other representative in any proceeding before the NLRB. A party wishing to have a representative appear on its behalf should have the representative complete a Notice of Appearance (Form NLRB-4701), and E-File it at www.nlr.gov or forward it to the NLRB Regional Office handling the petition as soon as possible.

Filing and Service of Petition – A party filing an RC, RD or RM petition is required to serve a copy of its petition on the parties named in the petition along with this form and the Statement of Position form. The petitioner files the petition with the NLRB, together with (1) a certificate showing service of these documents on the other parties named in the petition, and (2) a showing of interest to support the petition. The showing of interest is not served on the other parties.

Notice of Hearing – After a petition in a certification or decertification case is filed with the NLRB, the NLRB reviews the petition, certificate of service, and the required showing of interest for sufficiency, assigns the petition a case number, and promptly sends letters to the parties notifying them of the Board agent who will be handling the case. In most cases, the letters include a Notice of Representation Hearing. Except in cases presenting unusually complex issues, this pre-election hearing is set for a date 14 business days (excluding weekends and federal holidays) from the date of service of the notice of hearing. Once the hearing begins, it will continue day to day until completed absent extraordinary circumstances. The Notice of Representation Hearing also sets the due date for filing and serving the Statement(s) of Position and the Responsive Statement of Position(s). Included with the Notice of Representation Hearing are the following: (1) copy of the petition, (2) this form, (3) Statement of Position for non-petitioning parties, (4) petitioner's Responsive Statement of Position, (5) Notice of Petition for Election, and (6) letter advising how to contact the Board agent who will be handling the case and discussing those documents.

Hearing Postponement: Requests to postpone the hearing are not routinely granted, but the regional director may postpone the hearing for good cause. A party wishing to request a postponement should make the request in writing and set forth in detail the grounds for the request. The request should include the positions of the other parties regarding the postponement. The request must be filed electronically ("E-Filed") on the Agency's website (www.nlr.gov) by following the instructions on the website. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Statement of Position Form and List(s) of Employees – The Statement of Position form solicits commerce and other information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. In an **RC** or **RD** case, as part of its Statement of Position form, the employer also provides a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. If the employer contends that the proposed unit is not appropriate, the employer must separately list the same information for all individuals that the employer contends must be added to the proposed unit to make it an appropriate unit, and must further indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on

the NLRB website at [www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional%20Forms%20for%20Voter%20List.docx)

Ordinarily the Statement of Position must be filed with the Regional Office and served on the other parties such that it is received by them by noon 8 business days from the issuance of the Notice of Hearing. The regional director may postpone the due date for filing and serving the Statement of Position for good cause. The Statement of Position form must be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Statement of Position requirement are discussed on the following page under the heading "Preclusion." A request to postpone the hearing will not automatically be treated as a request for an extension of the Statement of Position due date. If a party wishes to request both a postponement of the hearing and a postponement of the Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

Responsive Statement of Position – Petitioner's Responsive Statement(s) of Position solicits a response to the Statement(s) of Position filed by the other parties and further facilitates entry into election agreements or streamlines the preelection hearing. A petitioner must file a Responsive Statement of Position in response to each party's Statement of Position addressing each issue in each Statement of Position(s), if desired. In the case of an RM petition, the employer-petitioner must also provide commerce information and file and serve a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. Ordinarily, the Responsive Statement of Position must be electronically filed with the Regional Office and served on the other parties such that it is received by noon 3 business days prior to the hearing. The regional director may postpone the due date for filing and serving the Responsive Statement of Position for good cause. The Responsive Statement of Position form must be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Responsive Statement of Position requirement are discussed on the following page under the heading "Preclusion." A request to postpone the hearing will not automatically be treated as a request for an extension of the Responsive Statement of Position due date. If a party wishes to request both a postponement of the hearing and a Postponement of the Responsive Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

Posting and Distribution of Notice of Petition for Election – Within 5 business days after service of the notice of hearing, the employer must post the Notice of Petition for Election in conspicuous places, including all places where notices to employees are customarily posted, and must also distribute it electronically to the employees in the petitioned-for unit if the employer customarily communicates with these employees electronically. The employer must maintain the posting until the petition is dismissed or withdrawn, or the Notice of Petition for Election is replaced by the Notice of Election. The employer's failure properly to post or distribute the Notice of Petition for Election may be grounds for setting aside the election if proper and timely objections are filed.

Election Agreements – Elections can occur either by agreement of the parties or by direction of the regional director or the Board. Three types of agreements are available: (1) a Consent Election Agreement (Form NLRB-651); (2) a Stipulated Election Agreement (Form NLRB-652); and (3) a Full Consent Agreement (Form NLRB-5509). In the Consent Election Agreement and the Stipulated Election Agreement, the parties agree on an appropriate unit and the method, date, time, and place of a secret ballot election that will be conducted by an NLRB agent. In the Consent Agreement, the parties also agree that post-election matters (election objections or determinative challenged ballots) will be resolved with finality by the regional director; whereas in the Stipulated Election Agreement, the parties agree that they may request Board review of the regional director's post-election determinations. A Full Consent Agreement provides that the regional director will make final determinations regarding all pre-election and post-election issues.

Hearing Cancellation Based on Agreement of the Parties – The issuance of the Notice of Representation Hearing does not mean that the matter cannot be resolved by agreement of the parties. On the contrary, the NLRB encourages prompt voluntary adjustments and the Board agent assigned to the case will work with the parties to enter into an election agreement, so the parties can avoid the time and expense of participating in a hearing.

Hearing – A hearing will be held unless the parties enter into an election agreement approved by the regional director or the petition is dismissed or withdrawn.

Purpose of Hearing: The primary purpose of a pre-election hearing is to determine if a question of representation exists. A question of representation exists if a proper petition has been filed concerning a unit

appropriate for the purpose of collective bargaining or, in the case of a decertification petition, concerning a unit in which a labor organization has been certified or is being currently recognized by the employer as the bargaining representative.

Issues at Hearing: Issues that might be litigated at the pre-election hearing include: jurisdiction; labor organization status; bars to elections; unit appropriateness; expanding and contracting unit issues; inclusion of professional employees with nonprofessional employees; seasonal operation; potential mixed guard/non-guard unit; and eligibility formulas. At the hearing, the timely filed Statement of Position and Responsive Statement of Position(s) will be received into evidence. The hearing officer will not receive evidence concerning any issue as to which the parties have not taken adverse positions, except for evidence regarding the Board's jurisdiction over the employer and evidence concerning any issue, such as the appropriateness of the proposed unit, as to which the regional director determines that record evidence is necessary.

Preclusion: At the hearing, a party will be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or Responsive Statement of Position(s) or to place in dispute in timely response to another party's Statement of Position or response, except that no party will be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. As set forth in §102.66(d) of the Board's rules, if the employer fails to timely furnish the lists of employees, the employer will be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

Conduct of Hearing: If held, the hearing is usually open to the public and will be conducted by a hearing officer of the NLRB. Any party has the right to appear at any hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record evidence of the significant facts that support the party's contentions and are relevant to the existence of a question of representation. The hearing officer also has the power to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence. Witnesses will be examined orally under oath. The rules of evidence prevailing in courts of law or equity shall not be controlling. Parties appearing at any hearing who have or whose witnesses have disabilities falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, should notify the regional director as soon as possible and request the necessary assistance.

Official Record: An official reporter will make the only official transcript of the proceedings and all citations in briefs or arguments must refer to the official record. (Copies of exhibits should be supplied to the hearing officer and other parties at the time the exhibit is offered in evidence.) All statements made at the hearing will be recorded by the official reporter while the hearing is on the record. If a party wishes to make off-the-record remarks, requests to make such remarks should be directed to the hearing officer and not to the official reporter. After the close of the hearing, any request for corrections to the record, either by stipulation or motion, should be forwarded to the regional director.

Motions and Objections: All motions must be in writing unless stated orally on the record at the hearing and must briefly state the relief sought and the grounds for the motion. A copy of any motion must be served immediately on the other parties to the proceeding. Motions made during the hearing are filed with the hearing officer. All other motions are filed with the regional director, except that motions made after the transfer of the record to the Board are filed with the Board. If not E-Filed, an original and two copies of written motions shall be filed. Statements of reasons in support of motions or objections should be as concise as possible. Objections shall not be deemed waived by further participation in the hearing. On appropriate request, objections may be permitted to stand to an entire line of questioning. Automatic exceptions will be allowed to all adverse rulings.

Election Details: Prior to the close of the hearing the hearing officer will: (1) solicit the parties' positions (but will not permit litigation) on the type, date(s), time(s), and location(s) of the election and the

eligibility period; (2) solicit the name, address, email address, facsimile number, and phone number of the employer's on-site representative to whom the regional director should transmit the Notice of Election if an election is directed; (3) inform the parties that the regional director will issue a decision as soon as practicable and will immediately transmit the document to the parties and their designated representatives by email, facsimile, or by overnight mail (if neither an email address nor facsimile number was provided); and (4) inform the parties of their obligations if the director directs an election and of the time for complying with those obligations.

Oral Argument and Briefs: Upon request, any party is entitled to a reasonable period at the close of the hearing for oral argument, which will be included in the official transcript of the hearing. At any time before the close of the hearing, any party may file a memorandum addressing relevant issues or points of law. Post-hearing briefs shall be due within 5 business days of the close of the hearing. The hearing officer may allow up to 10 additional business days for such briefs prior to the close of hearing and for good cause. If filed, copies of the memorandum or brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the memorandum or brief. No reply brief may be filed except upon special leave of the regional director. Briefs including electronic documents, filed with the Regional Director must be formatted as double-spaced in an 8½ by 11 inch format and must be e-filed through the Board's website, www.nlr.gov.

Regional Director Decision - After the hearing, the regional director issues a decision directing an election, dismissing the petition or reopening the hearing. A request for review of the regional director's pre-election decision may be filed with the Board at any time after issuance of the decision until 10 business days after a final disposition of the proceeding by the regional director. Accordingly, a party need not file a request for review before the election in order to preserve its right to contest that decision after the election. Instead, a party can wait to see whether the election results have mooted the basis of an appeal. The Board will grant a request for review only where compelling reasons exist therefor.

Voter List – The employer must provide to the regional director and the parties named in the election agreement or direction of election a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular ("cell") telephone numbers) of all eligible voters. (In construction industry elections, unless the parties stipulate to the contrary, also eligible to vote are all employees in the unit who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.) The employer must also include in a separate section of the voter list the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge or those individuals who, according to the direction of election, will be permitted to vote subject to challenge. The list of names must be alphabetized (overall or by department) and be in the same Microsoft Word file (or Microsoft Word compatible file) format as the initial lists provided with the Statement of Position form unless the parties agree to a different format or the employer certifies that it does not possess the capacity to produce the list in the required form. When feasible, the list must be filed electronically with the regional director and served electronically on the other parties named in the agreement or direction. To be timely filed and served, the voter list must be received by the regional director and the parties named in the agreement or direction respectively within 2 business days after the approval of the agreement or issuance of the direction of elections unless a longer time is specified in the agreement or direction. A certificate of service on all parties must be filed with the regional director when the voter list is filed. The employer's failure to file or serve the list within the specified time or in proper format shall be grounds for setting aside the election whenever proper and timely objections are filed. The parties shall not use the list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

Waiver of Time to Use Voter List – Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 calendar days after the date when the employer must file the voter list with the Regional Office. However, the parties entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483. A waiver will not be effective unless all parties who are entitled to the list agree to waive the same number of days.

Election – Information about the election, requirements to post and distribute the Notice of Election, and possible proceedings after the election is available from the Regional Office and will be provided to the parties when the Notice of Election is sent to the parties.

Withdrawal or Dismissal – If it is determined that the NLRB does not have jurisdiction or that other criteria for proceeding to an election are not met, the petitioner is offered an opportunity to withdraw the petition. If the petitioner does not withdraw the petition, the regional director will dismiss the petition and advise the petitioner of the reason for the dismissal and of the right to appeal to the Board.

REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A STATEMENT OF POSITION FORM

Completing and Filing this Form: The Notice of Hearing indicates which parties are responsible for completing the form. If you are required to complete the form, you must have it signed by an authorized representative and file a completed copy (including all attachments) with the RD and serve copies on all parties named in the petition by the date and time established for its submission. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You must EFile your Statement of Position at www.nlrb.gov, but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed.**

Note: Non-employer parties who complete this Statement of Position are NOT required to complete items 8f and 8g of the form, or to provide a commerce questionnaire or the lists described in item 7.

Required Lists: The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx](http://www.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional%20Forms%20for%20Voter%20List.docx).

Consequences of Failure to Supply Information: Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
STATEMENT OF POSITION

DO NOT WRITE IN THIS SPACE

Case No.
29-RC-275629

Date Filed
April 14, 2021

INSTRUCTIONS: Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.

Note: Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7.

1a. Full name of party filing Statement of Position		1c. Business Phone:	1e. Fax No.:
1b. Address (Street and number, city, state, and ZIP code)		1d. Cell No.:	1f. e-Mail Address
2. Do you agree that the NLRB has jurisdiction over the Employer in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No (A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)			
3. Do you agree that the proposed unit is appropriate? <input type="checkbox"/> Yes <input type="checkbox"/> No (If not, answer 3a and 3b.)			
a. State the basis for your contention that the proposed unit is not appropriate. (If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards.)			
b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit.			
Added		Excluded	
4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility.			
5. Is there a bar to conducting an election in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, state the basis for your position.			
6. Describe all other issues you intend to raise at the pre-election hearing.			
7. The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx . (a) A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B) (b) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit, if any to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of any individuals it contends must be excluded from the proposed unit to make it an appropriate unit. (Attachment D)			
8a. State your position with respect to the details of any election that may be conducted in this matter. Type: <input type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail			
8b. Date(s)	8c. Time(s)	8d. Location(s)	
8e. Eligibility Period (e.g. special eligibility formula)	8f. Last Payroll Period Ending Date	8g. Length of payroll period <input type="checkbox"/> Weekly <input type="checkbox"/> Biweekly <input type="checkbox"/> Other (specify length)	
9. Representative who will accept service of all papers for purposes of the representation proceeding			
9a. Full name and title of authorized representative	9b. Signature of authorized representative	9c. Date	
9d. Address (Street and number, city, state, and ZIP code)			9e. e-Mail Address
9f. Business Phone No.:	9g. Fax No.	9h. Cell No.	

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME	CASE NUMBER 29-RC-275629
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1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)

2. TYPE OF ENTITY

☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify)

3. IF A CORPORATION or LLC

A. STATE OF INCORPORATION OR FORMATION	B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES
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4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS

5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR

6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).

7A. PRINCIPAL LOCATION:

7B. BRANCH LOCATIONS:

8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

A. TOTAL:

B. AT THE ADDRESS INVOLVED IN THIS MATTER:

9. DURING THE MOST RECENT (Check the appropriate box): ☐ CALENDAR ☐ 12 MONTHS or ☐ FISCAL YEAR (FY DATES)

	YES	NO
A. Did you provide services valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value. \$		
B. If you answered no to 9A, did you provide services valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided. \$		
C. If you answered no to 9A and 9B, did you provide services valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$		
D. Did you sell goods valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$		
E. If you answered no to 9D, did you sell goods valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$		
F. Did you purchase and receive goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$		
G. Did you purchase and receive goods valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$		
H. Gross Revenues from all sales or performance of services (Check the largest amount): <input type="checkbox"/> \$100,000 <input type="checkbox"/> \$250,000 <input type="checkbox"/> \$500,000 <input type="checkbox"/> \$1,000,000 or more If less than \$100,000, indicate amount.		
I. Did you begin operations within the last 12 months ? If yes, specify date: _____		

10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?

☐ YES ☐ NO (If yes, name and address of association or group).

11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME	TITLE	E-MAIL ADDRESS	TEL. NUMBER
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12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)	SIGNATURE	E-MAIL ADDRESS	DATE
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PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A RESPONSIVE STATEMENT OF POSITION FORM

Completing and Filing this Form: For **RC and RD petitions**, the Petitioner is required to complete this form in response to each timely filed and served Statement of Position filed by another party. For **RM petitions**, the Employer-Petitioner must complete a Responsive Statement of Position form and submit the list described below. In accordance with Section 102.63(b) of the Board's Rules, if you are required to complete the form, you must have it signed by an authorized representative, and file a completed copy with any necessary attachments, with this office and serve it on all parties named in the petition responding to the issues raised in another party's Statement of Position, such that it is received no later than noon three business days before the date of the hearing. A separate form must be completed for each timely filed and properly served Statement of Position you receive. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You must E-File your Responsive Statement of Position at www.NLRB.gov, but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed. Note that if you are completing this form as a PDF downloaded from www.NLRB.gov, the form will lock upon signature and no further editing may be made.**

Required List: In addition to responding to the issues raised in another party's Statement of Position, if any, the Employer-Petitioner in an RM case is required to file and serve on the parties a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. This list must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the list in the required form, the list must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional%20Forms%20for%20Voter%20List.docx)

Consequences of Failure to Submit a Responsive Statement of Position: Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
RESPONSIVE STATEMENT OF POSITION – RC, RD or RM PETITION

DO NOT WRITE IN THIS SPACE

Case No.
29-RC-275629

Date Filed
April 14, 2021

INSTRUCTIONS: If a party has submitted and served on you a timely Statement of Position to an RC, RD or RM petition, the Petitioner must submit this Responsive Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and any attachments on each party named in the petition in this case such that it is received by noon local time, three business days prior to the hearing date specified in the Notice of Hearing. A separate form must be completed for each timely filed and properly served Statement of Position received by the Petitioner. The Petitioner-Employer in a RM case is required to file this Responsive Statement of Position and include an appropriate employee list without regard to whether another party has filed a Statement of Position.

This Responsive Statement of Position is filed by the Petitioner in response to a Statement of Position received from the following party:

The Employer

An Intervenor/Union

1a. Full Name of Party Filing Responsive Statement of Position

1c. Business Phone

1d. Cell No.

1e. Fax No.

1f. E-Mail Address

1b. Address (Street and Number, City, State, and ZIP Code)

2. Identify all issues raised in the other party's Statement of Position that you dispute and describe the basis of your dispute:

a. EMPLOYER NAME/IDENTITY [Box 1a of Statement of Position Form NLRB-505 and Questionnaire on Commerce Information]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

b. JURISDICTION [Box 2 of Statement of Position Form NLRB-505 and Questionnaire on Commerce Information]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

c. APPROPRIATENESS OF UNIT [Boxes 3, 3a and 3b of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

d. INDIVIDUAL ELIGIBILITY [Box 4 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

e. BARS TO ELECTION [Box 5 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

f. ALL OTHER ISSUES [Box 6 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

g. ELECTION DETAILS [Boxes 8a, 8b, 8c, 8d, 8e, 8f, and 8g of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

Full Name and Title of Authorized Representative

Signature of Authorized Representative

Date

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

Please fill all necessary fields on the form PRIOR to digitally signing. To make changes after the form has been signed, right-click on the signature field and click "clear signature." Once complete, please sign the form.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

THE CHILDREN'S VILLAGE

Employer

And

Case 29-RC-275629

**SPECIAL PATROLMAN BENEVOLENT
ASSOCIATION**

Petitioner

and

DISRICT COUNCIL 37, AFSCME, AFL-CIO
Intervenor

ORDER DENYING REQUEST TO RESCHEDULE HEARING

On April 15, 2021, the Notice of Representation Hearing was issued to all the parties, scheduling a hearing in this matter for Wednesday, May 5, 2021 at 9:30AM.

On May 3, 2021, District Council 37, AFSCME, AFL-CIO, requested an adjournment to the scheduled hearing.

That request is denied, and **IT IS HEREBY ORDERED** that the hearing in the above-entitled matter will take place on its originally scheduled date at 9:30 AM on **Wednesday, May 5, 2021** via Video Conference. The hearing will continue on consecutive days until concluded.

Dated: May 4, 2021



KATHY DREW-KING
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 29
Two Metro Tech Center
Suite 5100
Brooklyn, NY 11201-3838

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

THE CHILDREN'S VILLAGE

Employer

and

Case 29-RC-275629

**SPECIAL PATROLMAN BENEVOLENT
ASSOCIATION**

Petitioner

**AFFIDAVIT OF SERVICE OF: Order Denying Request to Reschedule Hearing, dated
May 4, 2021.**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on May 4, 2021, I served the above-entitled document(s) by **email, regular mail** upon the following persons, addressed to them at the following addresses:

Deborah Finley-Troup , VP Human

dfinley@childrensvillage.org

Resources

Children's Village

1133 Forest Hill Road

Staten Island, NY 10314

Daniel Schudroff , Attorney at Law

daniel.schudroff@jacksonlewis.com

JACKSON LEWIS, P.C.

666 Third Avenue

29th Floor

New York, NY 10017

Ron Brown , Vice President

vze15p8p9@verizon.net

Special Patrolman Benevolent Association

1707 Unionport Road

Bronx, NY 10462

Onya Brinson , Attorney

obrinson@dc37.net

125 Barclay Street

5th FL

New York, NY 10007

AFSCME DISTRICT COUNCIL 37

(212) 815-1321 Fax

55 WATER STREET

MANHATTAN, NY 10041-0004

May 4, 2021

FREDA DEVONSHIRE, Designated

Agent of NLRB

Date

Name

/s/ FREDA DEVONSHIRE

Signature

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

THE CHILDREN'S VILLAGE

Employer

and

Case 29-RC-275629

**SPECIAL PATROLMAN BENEVOLENT
ASSOCIATION**

Petitioner

and

AFSCME DISTRICT COUNCIL 37

Intervenor

**ORDER GRANTING REQUEST FOR
EXTENTION OF TIME TO FILE POST-HEARING BRIEFS**

On May 5, 2021, a hearing was held in this matter and the parties were informed that post-hearing briefs were due on May 12, 2021.

On May 6, 2021, the Employer filed a request for an extension of time to file a post-hearing brief to May 26, 2021. Pursuant to §102.66(h) of the *NLRB's Rules and Regulations*, the Employer's request for an additional 10 business days to file the brief exceeds the amount of time allowed to file a post-hearing brief. Parties may request up to 10 business days to file post-hearing briefs.

Therefore, the request for an additional 10 business days is **DENIED**. However, an extension of 5 additional business days is **GRANTED**, and **IT IS ORDERED** that the post-hearing briefs are due on May 19, 2021.

Dated: May 7, 2021



KATHY DREW-KING
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 29
Two Metro Tech Center
Suite 5100
Brooklyn, NY 11201-3838

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

THE CHILDREN'S VILLAGE

Employer

and

Case 29-RC-275629

**SPECIAL PATROLMAN BENEVOLENT
ASSOCIATION**

Petitioner

**AFFIDAVIT OF SERVICE OF: ORDER GRANTING REQUEST FOR
EXTENTION OF TIME TO FILE POST-HEARING BRIEFS, dated . May 7, 2021**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on May 7, 2021, I served the above documents by electronic mail and regular mail upon the following persons, addressed to them at the following addresses:

Daniel Schudroff, Attorney at Law
JACKSON LEWIS, P.C.
666 Third Avenue
29th Floor
New York, NY 10017
daniel.schudroff@jacksonlewis.com
Fax: (212)972-3213

Deborah Finley-Troup, VP Human Resources
Children's Village
1133 Forest Hill Road
Staten Island, NY 10314
dfinley@childrensvillage.org

Ron Brown, Vice President
Special Patrolman Benevolent Association
1707 Unionport Road
Bronx, NY 10462
vze15p8p9@verizon.net

Onya Brinson, Attorney
125 Barclay Street
5th FL
New York, NY 10007
obrinson@dc37.net
Fax: (212)815-1440

AFSCME DISTRICT COUNCIL 37
55 WATER STREET
MANHATTAN, NY 10041-0004
Fax: (212)815-1321

May 7, 2021

FREDA DEVONSHIRE, Designated
Agent of NLRB

Date

Name

/S/ FREDA DEVONSHIRE
Signature

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

THE CHILDREN'S VILLAGE

Employer

and

Case 29-RC-275629

**SPECIAL PATROLMAN BENEVOLENT
ASSOCIATION**

Petitioner

AFSCME DISTRICT COUNCIL 37

Intervenor

**SECOND ORDER GRANTING REQUEST FOR
EXTENTION OF TIME TO FILE POST-HEARING BRIEFS**

On May 5, 2021, a hearing was held in this matter and the parties were informed that post-hearing briefs were due on May 12, 2021.

On May 6, 2021, the Employer filed a request for an extension of time to file a post-hearing brief to May 26, 2021.

On May 7, 2021, the Regional Director denied the Employer's request to extend the due date to file briefs until May 26, 2021 but granted the request for an extension of time to file brief to May 19, 2021.

On May 18, 2021, Intervenor filed a request for an extension of time to file a post-hearing brief to May 26, 2021, as it had yet to receive the transcript from the hearing.

IT IS ORDERED that the Intervenor's request for an extension of time to file a post-hearing brief to May 26, 2021 is granted.

Dated: May 19, 2021



KATHY DREW-KING
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 29
Two Metro Tech Center
Suite 5100
Brooklyn, NY 11201-3838

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

THE CHILDREN'S VILLAGE

Employer

and

Case 29-RC-275629

**SPECIAL PATROLMAN BENEVOLENT
ASSOCIATION**

Petitioner

**AFFIDAVIT OF SERVICE OF: SECOND ORDER GRANTING REQUEST FOR
EXTENTION OF TIME TO FILE POST-HEARING BRIEFS**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on May 7, 2021, I served the above documents by electronic mail and regular mail upon the following persons, addressed to them at the following addresses:

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May 19, 2021

FREDA DEVONSHIRE, Designated
Agent of NLRB

Date

Name

/S/ FREDA DEVONSHIRE
Signature

Post Hearing Brief on behalf of Petitioner Special Patrolman's Benevolent Association

Case No. 29- RC- 275629

Please accept this Post Hearing Brief in support of the Petitioner's position that the unit petitioned for is an appropriate security guard unit as per the National Labor Relations Act. On May 5th, 2021, a pre-election hearing was held concerning what kind of work the Youth Care Workers do at the CHILDREN'S VILLAGE site in Staten Island, located at 1133 Forest Hill Road Staten Island NY, 10314. It is uncontested that this facility is a residential property for youth that have engaged in criminal activity including violent behavior. As a custodial facility the workers in the petitioned for unit have as a primary job responsibility maintaining a physically safe facility. The workers may have job titles that are more benign, but it is not what the worker's titles are but the type of work they do that determines whether they are guards or not.

During the hearing I called two witnesses that worked at the location under the title YOUTH CARE WORKER. Ms. Ikea Thompson who currently works there and Ms. Delilah Fleming who left the job on May 2nd, 2021. They both testified that the work they do is security guard work 90% of the time. They described that their

primary responsibilities were to safeguard life and property at the location. They both testified that during the day they must respond to verbal confrontations between the youths and sometime between the youths and the employees. They also must try and deescalate the possibility of physical confrontations before a fight occurs. If they are not able to do so and the situation escalates into a fight, they must physically restrain the resident youth.

The work location in Staten Island is a secured facility, equivalent to a detention center, with five buzzer doors that are locked 24/7. The youth are not allowed to come and go freely. The workers are responsible for the security of those doors. Nobody can get in or out unless they are buzzed by the YOUTH CARE WORKER. The workers are assigned to work on what is called a unit. The units have ten rooms per unit and there are two units. They are responsible for the safety of the youth that stay in the rooms and the property of the site. They must check the rooms for contraband as well as anything that can become a dangerous instrument.

The workers also patrol the units and maintain order. If an employee has a problem with one of the youths, they call the YOUTH CARE WORKER to handle the incident. If the youth must go to recreational activities The Youth Care Worker has to go with them. Their main purpose for being there is for security reasons. Their

main responsibility is to protect life and property. And in most cases, they are deescalating a verbal dispute or breaking up a fight. They are equipped with security wands to detect any illegal meddle objects and radios to call for assistance when necessary. The workers must write reports when necessary and they must make entries to a logbook. They may not be dressed in full uniforms, or carry hand cuffs or wear ID cards but, as our witnesses testified, the lack of these items increases danger to the workers and the youth. She also stated that this equipment is needed.

Management stated at the hearing that the workers are not bonded or deputized, but not all security guards are. They do not handle large sums of money or make arrest. They are fingerprinted and a background check is done before hiring. Management stated that they are trained with therapeutic technics to work with the youths for the purpose of helping them do better in life. But the actual training they receive is security guard training. They are trained to de-escalate potential or an actual dispute. That is security guard work.

In fact, both of our witnesses stated that they do not get a chance to assist the youths in bettering their lives because they are busy doing security guard work. That is why they have petitioned to force an election and have our union come in.

We are a law enforcement union, and we will be able to negotiate all the things they need to get the job done. Since the works that the YOUTH CARE WORKERS do is security guard work it is appropriate that they are represented by a security guard union not a union that includes mostly non security guard workers.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ron. Brown", with a stylized, cursive script.

Ron Brown

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

THE CHILDREN’S VILLAGE	:	
	:	
Employer,	:	Case 29-RC-275629
	:	
and	:	
	:	
SPECIAL PATROLMAN BENEVOLENT ASSOCIATION,	:	
	:	
Petitioner,	:	
	:	
and	:	
	:	
DISTRICT COUNCIL 37, AFSCME, AFL- CIO	:	
	:	
Intervenor.	:	

EMPLOYER’S POST-HEARING BRIEF

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The Children’s Village (the “Employer”) submits this post-hearing brief in support of its position that Petitioner Special Patrolman Benevolent Association (“Petitioner” or “SBPA”) seeks an incorrect unit of “All full-time and regular part-time security guards” at the Employer’s 1133 Forest Hill Road, Staten Island, New York facility (“Staten Island Promise”). There are no “guards” – as that term is defined by Section 9(b)(3) of the National Labor Relations Act and pertinent caselaw – employed at the Staten Island Promise site. In actuality, the SBPA seeks to represent employees holding the “Youth Care Worker” title whose primary responsibilities are not security-based. Rather, their primary function is to provide therapeutic care to the youth residents at the facility and ensure their safety and wellbeing. Any security duties they perform are merely incidental to their primary responsibilities. Thus, because they are not “guards” under the National Labor Relations Act, the SBPA cannot represent them without becoming a mixed-guard union.

Notably, in June 2016, the National Labor Relations Board certified the Intervenor, District Council 37, AFSCME, AFL-CIO (“Intervenor” or “DC-37”), as the exclusive bargaining representative for “[a]ll full-time and regular part-time Youth Care Workers employed by the Employer at its 1133 Forest Hill Road, Staten Island, New York facility.” That same certification excluded “[a]ll other employees, guards, and supervisors as defined in Section 2(11) of the National Labor Relations Act.” (Emphasis added). For the reasons described below, the certified unit should not be disturbed.

Finally, in the event an election is directed, it should be conducted by manual ballot in light of New York City’s reopening plans and because the Employer is willing to comply with the National Labor Relations Board’s COVID-19 safety protocols.

I. STATEMENT OF THE CASE

On April 15, 2021, the Petitioner filed a petition for representation seeking to represent all “full time and/or regular part-time security guards” at the Employer’s 1133 Forest Hills Boulevard facility in Staten Island. (Board Exhibit 1). The Petitioner admits into membership only guards and security officers and is not affiliated with any labor organization that admits into membership non-guards. (Board Exhibit 2, ¶ 3). On April 27, 2021, the Employer submitted its Statement of Position, arguing that, in actuality, the Petitioner sought to represent Youth Care Workers at the Staten Island Promise facility, who are not guards. (Board Exhibit 3). Additionally, the Employer explained that the National Labor Relations Board had previously issued a certification of representative of a unit comprised of Youth Care Workers which expressly excluded guards. (Board Exhibit 3; Union Exhibit 1). On that same day, the Intervenor filed its Statement of Position, asserting similar arguments. (Board Exhibit 4). On April 29, 2021, the Petitioner filed its Responsive Statement of Position arguing the proposed unit employees perform the work of security guards and are security guards. (Board Exhibit 5).

On May 5, 2021, the National Labor Relations Board held a hearing before Hearing Officer Ioulia Fedorova. The Petitioner called two witnesses (Delilah Fleming – who had resigned three days prior to the hearing – and Ikea Thompson). The Employer called Richard Gallwey, its Vice President of Residential Programs and Support Services.

II. FACTS

For more than 150 years, The Children’s Village has served vulnerable children and their families and communities in a wide range of human service roles and models. (Tr. 121-122). The Children’s Village supports family health and community wellness. (Tr. 122). The Employer operates several nonsecure placement facilities in the New York City metropolitan

area, including the Staten Island Promise site at 1133 Forest Hill Road which is at issue in this case. (Tr. 122-123).

A. The Employer's Relationship With Government Agencies

The New York City Administration for Children's Services ("ACS") and New York State Office of Children and Family Services contract with The Children's Village to provide family unification and permanency services to youth (some of whom have criminal backgrounds) in a nearby setting. (Tr. 45-46, 124). This program is known as the "Close to Home Initiative" and it is designed to place youth in residential facilities in the New York City metropolitan area – close to their families – as opposed to facilities in upstate New York. (Tr. 124). However, since the start of the pandemic, ACS has designated the Staten Island Promise facility as a COVID-19 isolation/quarantine site for youth originally from New York City. (Tr. 125).

B. The Staten Island Promise Facility

The Staten Island Promise facility is an open campus located on one and one-half acres of land in Staten Island. (Tr. 123). It does not have a gated entrance and has an open parking lot facing a main road. (Tr. 123). There are two buildings at the facility: (1) a main structure with administrative offices, classrooms, common areas, individual residential rooms, dining area, and laundry room; and (2) another building with a gymnasium, library and classroom. (Tr. 123-124). The Staten Island Promise facility has twenty beds. (Tr. 45). Like many worksites, Youth Care Workers need to be "buzzed" in to gain access to certain areas of the facility. (Tr. 32).

The Staten Island Promise site has a Division Director, who is also the Site

Director. (Tr. 125). The Division Director reports to Mr. Gallwey. (Tr. 121, 125-126).¹ Additionally, there is one Assistant Site Director and one Clinical Director. (Tr. 125). The Clinical Director supervises social workers, caseworkers, and family resource workers. (Tr. 125). The Assistant Site Director supervises two supervisors. (Tr. 125). In turn, those two supervisors oversee four assistant supervisors. (Tr. 125). Those assistant supervisors directly supervise Youth Care Workers who are the employees Petitioner contends are guards in this case. (Tr. 125).

C. Youth Care Workers' Primary Functions

Youth Care Workers are not guards. (Tr. 126). Rather, their primary responsibilities are to provide therapeutic care and ensure the well-being of the youth residing at the Staten Island Promise facility from the time the youth wake up to the time they wake up (e.g. a 24-hour operation). (Tr. 126, 140). Youth Care Workers are responsible for “eyes-on, ears-on supervision” with respect to all activities and functions. (Tr. 126). They help facilitate the Integrated Treatment Model (“ITM”) which is predicated upon Dialectical Behavior Therapy (“DBT”). (Tr. 150). Youth Care Workers are responsible for working with the youth residing at the Staten Island Promise facility on their ITM and DBT skills, which include mindfulness, distress tolerance, emotional regulation, intrapersonal effectiveness, and the confluence of the emotional, logical, and wise minds. (Tr. 90, 150). In fact, one Youth Care Worker testified that she used her therapeutic skills at least 20 hours of the week when working with the children residing at the facility and sought to improve their life skills (such as interpersonal skills) to help prepare them for the future. (Tr. 62, 65, 91-92).

The Youth Care Worker job description lists numerous attributes which establish

¹ Mr. Gallwey visits the Staten Island Promise three or four times per month. Petitioner sought to establish that Mr. Gallwey thus did not have a grasp on the day-to-day operations at the facility. However, that is simply not true. As a member of the management team, Mr. Gallwey is in constant communication with the Site Director and routinely receives feedback concerning employee performance issues. (Tr. 169).

Youth Care Workers' primary responsibilities are not security-based. In particular, Youth Care Workers are expected to:

- Consistently supervise[] youth within established guidelines and expectations, daily.
- Carr[y] self consistently as a role model (e.g. respect for others, professional standard of dress, appropriate conflict resolution, etc.), daily;
- Promote[] and utilize[] culturally sensitive care and treatment with youth, families and co-workers through on-going work toward the reduction of bias and the acceptance of differences (e.g.: gender, religion and sexual orientation);
- Promote[], teach[] and hold[] youth accountable to appropriate socialization skills;
- Actively support[] and carr[y] out Positive Behavior Intervention and Supports and Trauma Systems Therapy models in line with trainings, Team decisions and individual supervision;
- Actively support[] the educational collaboration with the school through support of educational process and contact with the school and tutors, as expected;
- Develop[] and support[] a learning environment in the program that promotes academic achievement, completion of homework, actively developing language skills, study habits, regular reading time, and math skill development;
- Assure[] youth's timely attendance and readiness for inter/intra-agency services (school, recreation, work, mental health, spiritual, substance abuse services, tutoring, etc.);
- Carr[y] out programs and activities of the Program Calendar on a monthly basis that includes age appropriate cultural, educational, skill building and recreational activities, as developed;
- Carr[y] out living skills assessments for youth 14+, monthly, as assigned;
- Carr[y] out life skills development on an individually and through monthly workshops to build skill levels of youth, as assigned;
- Prepare[] meals in accordance with the established menu in a way that engages youth in eating healthy; and
- Actively engage[] and monitor[] youth during meal times in line with the Socio-therapy Manual and best practices.

(Employer Exhibit 1).

During the hearing, the Youth Care Workers who testified on behalf of the Petitioner affirmed they perform many of these responsibilities.

D. Youth Care Workers' Training

Youth Care Workers receive similar training to other Children's Village employees on topics such as children's rights, engagement, life skills development, consequential thinking, de-escalation, emotional regulation, OSHA, and HIV. (Tr. 132, 154). They also receive therapeutic training, including three days of safe crisis management specific to the Staten Island Promise facility. (Tr. 132). Significantly, Youth Care Workers do not receive any specialized security training and there is no specialized security certification requirement to hold this position. (Tr. 104, 142).

E. Youth Care Workers Engagement Activities With Children

Every day, Youth Care Workers facilitate and participate in recreational activities with the youth at the Staten Island Promise facility. (Tr. 54-55, 85, 114-117; Employer Exhibit 1). These activities include sports, arts and crafts, music, and movies. (Tr. 55, 85-86, 113; Employer Exhibit 1). The Youth Care Workers' role is to nurture children, provide structure, and positive programming for emotionally, psychiatrically, or behaviorally challenged youth. (Tr. 56; Employer Exhibit 1).

Youth Care Workers use positive behavioral intervention skills to help the youths residing at the facility to reduce bias and help them accept differences in others. (Tr. 60, 87-88; Employer Exhibit 1). For example, a child who does not like particular food served in the dining room could start to disturb others. A Youth Care Worker would be expected to verbally de-escalate the situation by telling the child to ask for something different to eat, rather than

engaging in disruptive behavior. (Tr. 61). These skills translate to real-life scenarios such as when, pre-pandemic, Youth Care Workers would accompany the youth to local restaurants and help them improve their manners and social skills towards restaurant staff. (Tr. 86-87).

Thus, it is clear that Youth Care Workers' main goal is to improve the youth's lives and allow them to get to their full potential. (Tr. 62, 74). In fact, both Youth Care Workers who testified at the May 5, 2021 hearing acknowledged that they routinely engage the children at the facility and view themselves as role models. (Tr. 59-60, 66, 87).

F. Youth Care Workers' Primary Responsibilities Do Not Include Guard Functions

Youth Care Workers do not carry weapons, clubs, or other security-type devices. (Tr. 131). They likewise do not wear uniforms, identification badges, or nametags identifying themselves as security or guard personnel. (Tr. 103-104, 131). Youth Care Workers are not required to be bonded or deputized. (Tr. 139). They are fingerprinted and photographed at the time of their hire, just like every other Children's Village employee. (Tr. 139).

While ACS requires that the Staten Island Promise facility maintain closed-circuit televisions, it is not the Youth Care Workers' primary responsibility to monitor those cameras and they do not occupy a security booth. (Tr. 132-133). Rather, Youth Care Workers are located wherever the youth are located. (Tr. 132). For example, during the academic day, the Youth Care Workers are located in the classroom. (Tr. 132).

Youth Care Workers are not expected to use physical force in the event of a security threat. (Tr. 133). If a dispute between youths arises, Youth Care Workers are expected to respond first with verbal de-escalation techniques, which are often successful. (Tr. 36-37, 59, 90, 134). If those efforts fail, it is only then that Youth Care Workers resort to safe physical intervention tactics taught during safe practice management training. (Tr. 134). Notably, all

employees at the Staten Island Promise site are trained in safe practice management. (Tr. 146). At most, a Youth Care Worker might use a safe physical intervention tactic once or twice per week. (Tr. 41).

Youth Care Workers are not expected to contact law enforcement authorities and do not enforce any of the Employer's rules regarding the property, employees, or other persons. (Tr. 49, 134). A supervisor would make the decision to contact the police. (Tr. 49). Additionally, Youth Care Workers are not responsible for monitoring the entrance and exit of people at the Staten Island Promise facility and do not issue visitor passes. (Tr. 137). Rather, these are all management functions. (Tr. 134, 137-138). Although there has never been a work stoppage at the Staten Island Promise facility, Youth Care Workers would not be expected to play a role in performing security functions if one occurred. (Tr. 33-34, 140).

Youth Care Workers perform contraband searches under management supervision, as required by ACS, but this is not one of their primary responsibilities. (Tr. 137-138). Typically, Youth Care Workers will search for items such as lighters and pens. (Tr. 27). As a result of the pandemic, Youth Care Workers do not frisk youth. (Tr. 162). Facility inspections are performed by maintenance staff. (Tr. 138). Notably, sweeps and shakedowns are not performed at the Staten Island Promise facility. (Tr. 139). Although Youth Care Workers prepare incident reports, they only do so when an incident happens, such as when there is an accident where a youth sustains an injury. (Tr. 29, 135, 142). Youth Care Workers communicate with one another via two-way radios to help facilitate transitions from one area of the main facility to another (such as the gym to a classroom or from a classroom to the dining room). (Tr. 136). This way, those Youth Care Workers on duty know where youth and staff are at all times. (Tr. 136). Youth Care Workers use key cards and access codes to travel between areas. (Tr. 139).

III. THE RECORD EVIDENCE DEMONSTRATES YOUTH CARE WORKERS ARE NOT GUARDS WITHIN THE MEANING OF THE ACT

The legislative history underlying Section 9(b)(3) of the Act confirms that the separation of guards from other employees for collective bargaining purposes was designed to prevent conflicting loyalties and to ensure an employer could rely upon a core of plant protection employees should there be any industrial unrest. See e.g. Tac/Temps, 314 NLRB 1142, 1144 (1994); Lion Country Safari, 225 NLRB 969, 970 (1976); McDonnell Aircraft Corporation, 109 NLRB 967, 969 (1954). The Board has continuously held that “to qualify as a guard under Section 9(b)(3) of the Act, employees must perform security functions involving the protection of an employer’s property, as an essential part of their duties and those security functions must encompass traditional police and plant security functions as a major and continual part of their job duties.” Inland Steel Company, 308 NLRB 868, 871 (1992) (emphasis added). These duties include: (1) the enforcement of rules directed at other employees; (2) the authority to compel compliance with those rules; (3) training in weapons/security procedures; (4) possession of weapons; (5) engaging in security rounds/patrols; (6) monitoring/controlling access to the employer’s premises; and (7) wearing guard-like uniforms or displaying other indicia of guard status. See Boeing Co., 328 NLRB 128, 130 (1999) (internal citations omitted).

The Board has consistently determined that individuals who perform some “guard-like” duties that are incidental to their actual duties are not guards under the Act. George Junior Republic, 224 NLRB 1581, 1583 (1976) is directly on point. In that case, the Board found that “nightmen” at a facility for delinquent teenage boys were not guards because, like the present case, their primary responsibilities were custodial in nature, specifically to ensure the residents did not leave the premises at night, maintain order, and prevent unauthorized people from entering residential cottages. See also 55 Liberty Owners Corp., 318 NLRB 308 (1995);

Ford Motor Corp., 116 NLRB 1995 (1956); Hoffman Security, 302 NLRB 922, 922-923 (1991) (receptionists found not to be guards even though employed by security contractor that provided both security officers and receptionists to a hospital, where the receptionists, assigned to information desks, greeted visitors, provided information, observed and reported irregularities, at most locations distributed visitor passes or asked visitors to sign in, and at two locations monitored closed circuit televisions; and Madison Square Garden, 325 NLRB 971 (1998) (Board held entertainment staff not guards even though incidentally performed the function of denying entrance or access to individuals to events).

Youth Services Agency, Inc., 04-RC-21002, 2005 NLRB Reg. Dir. Dec. LEXIS 55 (May 6, 2005) has remarkably similar facts to the present case. In that case, the Regional Director concluded that overnight watchpersons (“OWP”) working at an outdoor residential placement program for court-referred boys were not guards under the Act. The Regional Director first noted that the OWPs’ general duties were to “maintain supervision of the residents under their care...” at all times. Id. at *9. In particular, the OWPs ensured the “residents d[id] not harass or threaten each other or try to escape from the Facility.” Id. Additionally, the OWPs “monitor[ed] the residents in their cabins by observing the monitors in the staff sheds, as well as by making regular checks of the cabins.” Id.

The OWPs carried keys to the facility’s buildings as well as two-way radios. Id. at *11. The OWPs used the radios to communicate with other OWPs to report pillow fights, contraband, or other suspicious activities. Id. Further, the OWPs completed logs to document resident cabin checks and incident reports. Id. at *12, 16. During those checks, the OWPs searched for contraband, “such as drugs, guns, knives, bottles, or cigarettes.” Id. at *13-14.

Additionally, the OWPs were expected to notify supervisors of any unauthorized individual on the premises and to report observed property damage. Id. at *15.

The OWPs did not receive any specific security training, nor did the position require any particular security qualification. Id. at *16. OWPs did not wear a particular uniform, did not carry weapons, and were neither bonded nor deputized. Id. at *17. They did submit to a background check in accordance with applicable regulatory mandates. Id.

Based on this record, relying upon George Junior Republic, the Regional Director concluded that the OWP's "primary function" was to "account for the custody and safety of the residents...." Id. at *18. The Regional Director found that the OWPs did "not monitor ingress or egress to the Facility, issue visitor passes, inspect packages, lock or unlock gates to the Facility, or make rounds of the Facility, responsibilities often relied on by the Board in finding employees to be guards." Id. Rather, these duties were completed by supervisors. The Regional Director noted the Board "has found employees who perform some guard functions not to be guards where other employees provide the major security duties on the premises." Id. at *21 citing Madison Square Garden, 325 NLRB at 971; Lion Country Safari, 246 NLRB at 156; George Junior Republic; and New Hotel Monteleone, 172 NLRB 1092, 1094 (1960). Additionally, the Regional Director found that OWPs did not have any authority to enforce rules against fellow employees nor would they be expected to provide security in the event of labor unrest. Youth Care Agency, 2005 NLRB Reg. Dir. Dec. LEXIS at *24. Based on this record, the Regional Director concluded that even though the OWPs performed certain guard-like functions, they were still "incidental to their primary responsibility of accounting for and supervising the residents...." Id. at *21.

Youth Services Agency, and the authority cited therein (including the George Junior Republic), apply with equal force to the present case. The OWPs described in that case and the Youth Care Workers in the present case have similar duties, attributes, and responsibilities. Like the OWPs, the Youth Care Workers are not provided specific security training and are not required to have any specific security qualifications. (Tr. 104, 142). Similarly, Youth Care Workers do not wear a particular uniform identifying them as security officers, do not carry weapons, are not bonded, and are not deputized. (Tr. 103-104, 131, 139). Moreover, in both cases, supervisors – and not the employees in question – monitored ingress/egress to the premises and issued visitor passes. (Tr. 49, 134, 137-138). That fact militates against a guard finding based on the above-referenced authority. While Youth Care Workers need to be “buzzed” in to access certain areas of the Staten Island Promise facility, that fact alone is not dispositive, given that many worksites have similar access restrictions.² (Tr. 139). Additionally, the OWPs in Youth Care Agency and the Youth Care Workers in the instant case do not enforce rules against fellow employees or provide security in the event of labor unrest. (Tr. 33-34, 137-138, 140).

Each of the Petitioner’s witnesses offered conclusory testimony predicated upon leading questions in a futile attempt to establish their primary duties are predominantly security-based in nature. For example, Ms. Fleming (who resigned from the Employer three days before the hearing) testified as follows:

Q: Ms. Fleming, Mr. Brown wants – is asking you if you can list some of the – daily duties, if you can go through the daily duties of what it is you have to do. So if you can walk this – walks us through, you know, you come into work, what – what are your responsibilities until you leave work? Like, if you can do a quick breakdown.

² For example, one cannot just walk into Region 29’s offices. However, that fact would not demonstrate that Regional Office personnel are guards.

A: So I come into work and I have to report to the unit, that's where the children – the children are. And we give – we help serve breakfast, and we have to do 15-minute bed checks. Basically, it's going around and see, you know, what the youth are doing in the rooms and making sure that they're not causing any harm to themselves.

Before the youth even get onto the unit, we have to do inventory to make sure they're not coming in with anything or, you know, and counting how many items that they have. When the youth – when the kids fight, we have to make sure they're not fighting, try to deescalate it with, you know, verbal – hopefully it doesn't, like lead to physical. That's my day.

...

Q: Okay. The majority of the time that you were there, how would you say the majority of the time was spent while you were there?

A: The majority of the time was spent really trying to deescalate and get the children to stop fighting.

(Tr. 23-24, 69-70).

Similarly, Ms. Thompson testified as follows:

Q: So the majority of the time that you're working there, what is your responsibility?

A: Security.

...

Q: So you stated earlier that 90 percent of your time is spent doing security; is that correct?

A: Correct.

(Tr. 96).

Notably, during cross-examination, Ms. Thompson outlined her duties during half of a typical Saturday 8 am-4 pm shift and confirmed that she either facilitated or oversaw youth activities. (Tr. 107, 114-117). Although she claimed that she spent time “positioning” and “securing,” she provided no additional details as to what those activities entail. (Tr. 108-109). As a result, Ms. Thompson's description of her purported security duties are overexaggerated.

In reality, at best, Petitioner's witnesses revealed that the security duties they perform are incidental to their primary duties. In that regard, it is simply not plausible to believe that Youth Care Workers spend the entirety of their time breaking up fights between youths, particularly given that the Staten Island Promise facility is a nonsecure facility which has housed youth in COVID-19 quarantine isolation and their primary responsibility is to provide therapeutic care and assure the well-being of the youth at the facility. (Tr. 89, 140). On cross examination, each of the Petitioner's witnesses acknowledged participating in recreational activities with the youth, engaging them during meal times, working to improve their social skills, provide structure and positive programming for them, and using mindfulness techniques to help them express themselves. (Tr. 54-55, 85-86, 113). While the Petitioner's witnesses also testified that they monitor youth, perform contraband checks, complete log reports, and use two-way radios, those duties are incidental to their primary responsibilities, like the OWPs in Youth Care Agency.

The evidence is overwhelming that any duties the Youth Care Workers perform which are "guard-like" are duties incidental to their actual duties. Rather, as noted above, the Youth Care Workers' primary responsibilities are focused on ensuring the safety of the youth at the Staten Island Promise facility, particularly during the COVID-19 pandemic. Their job is to serve as role models and to nurture children, provide structure, and positive programming for emotionally, psychiatrically, or behaviorally challenged youth. (Employer Exhibit 1, Tr. 56-57). Accordingly, because Youth Care Workers are not guards, Petitioner cannot represent them without invalidating its status as a guard union. As a result, the only appropriate unit in this case is the one that the National Labor Relations Board certified in June 2016, which expressly excludes guards.

IV. IF AN ELECTION IS TO BE HELD, IT SHOULD BE BY MANUAL BALLOT

If an election is to be held, the Employer's position is that it should be conducted by manual ballot on a Thursday no earlier than Thursday, June 24, 2021. If the Employer's request for a manual ballot is denied and a mail ballot election is ordered, the Employer requests to have the ballots mailed on a Thursday, no earlier than Thursday, June 24, 2021. We recognize that the Region has essentially made mail ballot elections the default procedure for elections during the COVID-19 pandemic. That said, we respectfully submit that a manual ballot election, as the pandemic begins to subside, is warranted here.

First, mail ballot elections should be the exception, not the rule. The Board's longstanding policies support conducting elections by manual ballot given the inherent value of having a Board agent present at the election. See San Diego Gas & Electric, 325 NLRB 1143, 1144 (1998). Representation elections should generally be conducted manually either at the employees' workplace or at another appropriate location. Id. Mail ballot elections are disfavored and unreliable even in normal circumstances. See Int'l. Total Svcs., Inc., 272 NLRB 201 (1984) (Board invalidated results of mail ballot election when it found that mail-delivery procedures affected the outcome). Moreover, the present unreliability of mail balloting is compounded even more by logistical problems and a lack of procedural safeguards. The strong likelihood of misdirected and unreceived mail in the current climate makes clear that holding a mail ballot election would violate the Board's fundamental policy of affording employees the broadest possible participation in Board elections. Kerrville Bus Co., 257 NLRB 176, 177 (1981). Recent data continues to support this policy. Although mail-in ballot participation has increased during the COVID-19 pandemic, mail-ballot participation continues to fall short of manual election participation at nearly 30% lower before March 15, 2020 and 20% lower

between March and November 2020. See Aspirus Keweenaw, 370 NLRB No. 45 (November 9, 2020).

In Aspirus Keweenaw, the Board outlined six situations “that will normally suggest the propriety of using mail ballots under the extraordinary circumstances presented by [the COVID-19] pandemic.” Id. at *7. The six situations are as follows:

- (1) The NLRB office tasked with conducting the election is operating under “mandatory telework” status;
- (2) Either the 14-day trend in the number of new confirmed cases of COVID-19 in the county where the facility is located is increasing, or the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher;
- (3) The proposed manual election site cannot be established in a way that avoids violating mandatory state or local health orders relating to maximum facility occupancy;
- (4) The employer fails or refuses to commit to abide by the GC Memo 20-10 protocols;
- (5) There is a current COVID-19 outbreak at the facility or the employer refuses to disclose and certify its current status;
- (6) Other similarly compelling considerations.

The Board, however, found that the presence of any of the above situations does not require a mail-ballot election. Id.

Here, all the factors above support holding a manual election. Indeed, some of these factors plainly support a manual ballot election. The Region 29 office is not currently under a “mandatory telework” status. The Employer will willingly comply with the protocols set forth in GC Memo 20-10. The Employer’s site is not experiencing a COVID-19 outbreak.

As for the second Aspirus factor, data for Staten Island shows that the average of daily new cases has plummeted.

As for the third Aspirus factor, a manual ballot is warranted here based on the Employer’s ability to implement effective safety measures at the facility for a manual election.

The Employer can establish a socially distant manner in which employees can participate in a manual election. In fact, the Region held an election at this facility in May 2016. The Employer can also institute additional safety precautions to host the election. For example, employees could be temperature screened before entering the polling room. Employees could have to wait in a socially distanced line before entering the polling room, one at a time. Employees would have to wear masks at all times in the polling room. The Employer could also coordinate with the Board to set up plastic partitions to ensure the safety of a Board agent. All of these proposed precautions show that the Employer can run a safe and sanitary manual election. Nor would a manual ballot pose any more risk to employees. They already work on-site daily. None of the employees telework.

Finally, there are no “compelling considerations” that warrant a mail ballot election. Effective today, New York has effectively reopened. 15,000 people watched the New York Knicks at Madison Square Garden on May 23, 2021. New York citizens have been eligible for a COVID-19 vaccine (most recently even the youths at the Staten Island Promise facility have become eligible). Thus, while the Employer does not maintain data on employee vaccinations, it is very likely that a significant percentage of employees are already fully vaccinated. Those employees, according to all available data, have a significantly lower risk of spreading COVID-19 to others or of becoming sick.

In summary, all factors support a manual ballot election. See Rush Univ. Med. Center, 370 NLRB No. 115 (Apr. 27, 2021) (reversing and remanding regional director’s decision for mail ballot election).

V. CONCLUSION

As the foregoing demonstrates, Youth Care Workers are not guards. To the extent they perform guard duties, they are incidental to their primary duties. As a result, the Petitioner cannot represent them without compromising its status as a guard union. Finally, in the event the Region directs an election, it should be conducted by manual ballot.

Dated this 26th day of May 2021.

Respectfully submitted,
JACKSON LEWIS P.C.

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CERTIFICATE OF SERVICE

I hereby certify that, on May 26, 2021, I caused a true and correct copy of the foregoing Post-Hearing Brief to be served on the Special Patrolman Benevolent Association, through its representative, Ron Brown, via e-mail, at vze15p8p9@verizon.net and served on District Council 37, AFL-CIO, through its counsel of record, Onya Brinson, at OBrinson@dc37.net.

/s Daniel D. Schudroff
Daniel D. Schudroff

4844-8003-8888, v. 2

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 29

_____)	
CHILDREN’S VILLAGE.))	
)	Case No. 29-RC-273752
Employer,)	
-- and --)	
)	
DISTRICT COUNCIL 37, AFSCME,)	
AFL-CIO)	
Intervenor.)	
_____)	

PETITIONER’S POST-HEARING BRIEF TO THE REGIONAL DIRECTOR

Pursuant to Section 102.67(a) of the National Labor Relations Board (hereinafter the "Board" or "NLRB") Rules and Regulations and the grant of the Hearing Officer on May 5, 2021, Petitioner, by its attorney Robin Roach, General Counsel of District Council 37, AFSCME, AFL-CIO, Onya Brinson, of counsel, hereby submits its post-hearing brief in the above-captioned representation proceeding.

PRELIMINARY STATEMENT

In June 2016, the Union petitioned to represent all full-time Youth Care Workers, excluding confidential employees, guards, and supervisors as defined by the Act employed at the Employer’s center located at 4312 Church Ave., Staten Island NY 11203. On June 7, 2016, the National Labor Relations Board (hereinafter “NLRB” or “the Board”) certified the Youth Care Workers, excluding confidential employees, guards, and supervisors as defined by the Act. Pursuant to Board precedent, this certified bargaining unit is appropriate and specifically excluded security guards. As such, the burden falls on the Petitioner, Special Patrolman Benevolent

Association (hereinafter “SPBA” or “Petitioner”), to rebut that presumption that the Children’s Village Youth Care Workers are not performing security guard duties. The Petitioner failed to rebut the presumption of appropriateness of the Board-certified bargaining unit in this case. Furthermore, the Employer, Children’s Village, is opposed to the Petitioner’s representation petition to the NLRB. To rebut the presumption of appropriateness, the functional integration of the multiple locations must be “so substantial as to negate the separate identity of the single-location unit.” *RB Associates*, 324 NLRB 874, 878.

Section 9(b)(3) of the National Labor Relations Act (hereinafter “NLRA”), prohibits mixed-guard unions because “Congress designed Section 9(b)(3) to shield employers from being required to recognize and bargain with a union in circumstances where there was a potential conflict of loyalties involving guard employees. An employer’s guards may be called upon to protect or enforce the employer’s property rights against nonguard fellow union members engaged in protected activity against the employer.” See Loomis Armored US Inc., 2016 NLRB Lexis 428

The record bears out that numerous other factors weigh against the Petitioner’s representation petition. The NLRB carefully reviewed this bargaining unit in 2016 and determined that Youth Care Workers and certified this bargaining unit to the exclusion of security guards. Children’s Village Youth Care Workers do not control ingress or egress of visitors to the Children’s Village Staten Island location. The Youth Care Workers do not wear security guard uniforms. Youth Care Workers are not trained to use or carry weapons. There is no interchange between the Church Ave. location and the additional locations proposed by the Employer. The Youth Care Workers do not wear any security indicia (ex: security guard badge) that would signal work as a security guard. The Youth Care Workers have not even been provided instruction as to what would happen if there was a strike at Children’s Village. Furthermore, the Children’s Village

Youth Care Workers at Staten Island While there may be some centralized control of personnel practices, The Employer failed to establish that there exists such a degree of functional integration that the identity of the Church Ave. location is subsumed by the whole. The Regional Director must immediately issue a Direction of Election.

STATEMENT OF THE ISSUES

The outstanding issues for the Regional Director's determination in this matter are:

1. Whether the Youth Care Workers at Children's Village in Staten Island are Security Guards; and
2. Whether the election should be conducted via mail ballot or in-person.

STATEMENT OF FACTS

Intervenor and Employer asserts that the appropriate unit for Youth Care Workers at Children's Village was the bargaining unit certified by the NLRB on June 9, 2016, which included all full-time and regular part-time Youth Care Workers employed by the Employer at its 1113 Forest Hill Road, Staten Island, NY facility, and excluding all other employees, guards, and supervisors as defined by Section 2(11) of the Act. See Intervenor Ex. 1.

The Petitioner asserts that the already Board certified bargaining unit of full-time and part-time Youth Care Workers should be designated as security guards and that the Board should permit an election in which the Youth Care Workers should be able to vote for the SPBA to represent full-time and part-time Youth Care Workers as security guards.

Petitioner presented two witnesses. Delilah Fleming, employed as a Youth Care Worker at the Children's Village Forest Hill location from June 2020-May 2, 2021, and Ikea Thompson, employed as a Youth Care Worker at the Forest Hill location since 2019. Both Ms. Fleming and Ms. Thompson worked at the Forest Hill location. Ms. Fleming testified that she regularly

engaged in recreational activities and facilitate games with the children in the Children's Village gym at the Staten Island location. (Tr. 54; Tr. 55). Ms. Fleming also testified that as a Youth Care Worker, she facilitated arts & crafts, as well as musical activities and trips with the children who came to the Forest Hill location. (Tr. 55; Tr. 56). Furthermore, Ms. Fleming testified that she engaged in therapeutic activities with the children to provide positive support and nurturing as some of these children were physically, emotionally and behaviorally challenged. (Tr. 56; Tr. 57). Ms. Fleming testified that when there were altercations at the Staten Island village location involving the children, she was able to de-escalate with verbal techniques to prevent any escalation. (Tr. 59).

Ms. Fleming also provided positive nurturing to the children as a Youth Care Worker by using mindfulness techniques with them. Ms. Fleming explained that mindfulness techniques was a method of enabling children to think before acted in a potentially negative way. (Tr. 57). Ms. Fleming also considered herself a role model for the children at the Forest Hill location as she helped them to reduce biases and accepting the differences in other people. (Tr. 57; Tr. 58). She also worked expanded her work in positive reinforcements for the children by performing positive behavior intervention. Ms. Fleming explained that positive behavior reinforcement would be if a child did not like the food they were given, she approached and inquired as to whether the child wanted a different meal and explain that all the child had to do was ask for a different meal. (Tr. 60; Tr. 61). Furthermore, she testified that she received training on how to work with the children at the facility on mindfulness, therapeutic techniques. (Tr. 63; Tr. 64).

Ms. Fleming testified that she also works to help the children at the Forest Hill location build life skills by regularly engaging them in discussions about what their hobbies, interests and promoting the children in staying focused on what their ultimate career choices will be. (Tr. 64;

Tr. 65). She testified that she also engaged the children in what their favorite hobbies were, the kind of music they liked and who their favorite musicians were. (Tr: 65).

Ms. Restivo described the head start centers as “locations in which we support our children and families within the community” (Tr. 28). Ms. Restivo also testified that there are PSCHS-operated facilities and that there are “Facility Partners” which receive “support” and funding from PSCHS, but are “separate and apart” from the PSCHS-operated locations (Tr. 133). The PSCHS website lists several of the employer’s secondary locations as “facility partners,” including Bnei Torah and Munkatch, rather than PSCHS-operated secondary locations. P. Exh. 6.

PSCHS sets its standards according to the Head Start Program Performance Standards, a document created by the U.S. Department of Health and Human Services – Office of Head Start to “to assist grantees implementing the Head Start Program Performance Standards.” Emp. Exh. 2. Ms. Restivo testified that PSCHS’s policies are not created by management out of whole cloth, but rather PSCHS policies are all based on the Head Start Program Performance Standards.

[T]he Head Start Program Performance Standards] is really what we need to follow in all of our centers across the entire program. So basically it goes through each service area, and we have to ensure that we're in compliance within all those service areas...It's very comprehensive. When you go through it, you'll see, within each service areas, they have qualifications. You know, what each certain -- what each role has. And it pretty much set the standard of we -- what we have to follow, according to the office of Head Start...We have to be in compliance. We are a Head Start program at each one of our centers. And doing so, we have to ensure that we are 100 percent in compliance with these standards.

(Tr. 38-39).

The Employer does not have independent criteria by which it evaluates prospective employees or necessary qualifications, rather it adopted the criteria set forth in the Head Start Program Performance Standards document. Ms. Restivo testified regarding the requirements to be

a teacher at PSCHS, “we have to abide by, and be in compliance with what's written in the Head Start Program Performance Standards in conjunction with Article 47. And we have to go by what is the most stringent” (Tr. 55).

The Employer produced an organizational chart to explain its managerial structure. Emp. Exh. 1. She explained the various positions below her in the organizational chart:

Our program directors support each of our centers and give oversight and assistance to the center's staff. And they also work very closely with all of our early childhood development and health services. So we have managers within each service area. So what does that mean? That means we have an education director who oversees education, a disabilities director, a health -- a mental health coordinator, health service coordinators, nutrition managers, all that work with the center managers, which are your center directors at each individual location. So they go to all the centers and they ensure, and they give constant support to all of the employees at the local locations.

(Tr. 31-32). Ms. Restivo testified that the various employees who hold the titles of Education Director, Disability/Mental Health Coordinator, Health Service Coordinator, and Nutrition Manager visit each PSCHS site on a weekly basis (Tr. 33). She testified that “Every single person you see on [the organizational chart], all of these coordinators visit the sites. They will visit all the locations. All of our centers” (Tr. 42). Ms. Restivo testified that even despite the ongoing COVID-19 pandemic, PSCHS’s “oversight and assistance” of the various sites has not changed (Tr. 33). However, Ms. Griffith testified that she had never seen an individual holding the title of Disability/Mental Health Coordinator Health Services Coordinator at the Church Ave. location (Tr. 201). She testified that she had heard of a nutritionist but had never seen that person at the Church Ave. location (Tr. 201). Ms. Lerice testified that she likewise had never seen an individual holding the title of Health Services Coordinator or Nutrition Manager at the Church Ave. location

(Tr. 244-245). The only individual she knew who held a title related to disabilities is Nikkita Ishmael, but did not identify her as the Disability/Mental Health Coordinator (Tr. 244).

Ms. Restivo testified that she personally “spent quite a bit of time at Church Avenue” and that she held the location “very close and dear to [her] heart” (Tr. 108). Ms. Griffith testified that she had seen Ms. Restivo at the location “maybe once. Maybe” (Tr. 200). Nicky-Anna Lerice testified, as a nearly two-year employee at Church Ave., testified that she had “seen her once at the site and maybe about twice by Zoom” (Tr. 220).

Petitioner’s witnesses identified the Church Ave. location’s frontline supervisors as Diann Skeete, Nikkita Ishmael¹, and Elianna Bazian. Ms. Skeete serves as the Church Ave. location’s Education Director. Witnesses had conflicting understandings of Ms. Ishmael’s title. Ms. Griffith identified Ms. Ishmael as the Church Ave. location’s “special ed coordinator,” (Tr. 197), and Ms. Lerice identified her as the Church Ave. location’s “disability coordinator” (Tr. 259). Ms. Restivo identified Ms. Ishmael as the “education and inclusion coordinator” (Tr. 71). Petitioner’s witnesses identified Ms. Bazian as the “program director” (Tr. 258). Ms. Lerice clarified the chain of command, stating “everything will have to go through -- first it would be [Ms. Skeete] and [Ms. Ishmael]...and from there [Ms. Skeete] and [Ms. Ishmael] go to [Ms. Bazian]” (Tr. 245). Other than these three people, Ms. Griffith and Ms. Lerice do not see any other individuals from the PSCHS management team (Tr. 201). Ms. Skeete, Ms. Ishmael, and Ms. Bazian all share office space at the Church Ave. location (Tr. 258).

Ms. Restivo testified that Ms. Skeete and Ms. Ishmael leave the Church Ave. location at approximately 2:00 p.m. to visit the other sites for which they are responsible (Tr. 276). Ms. Griffith stated that Ms. Ishmael works at the Church Ave. location between 9:00 a.m. and 10:00

¹ Ms. Ishmael is sometimes referred to as “Nikkita Herrera” in the record.

a.m. until at 2:00 p.m., Monday through Friday (Tr. 212). Ms. Lerice testified that Ms. Ishmael works at the Church Ave. location every day from 8:00 a.m. to 2:00 p.m. (Tr. 259). Ms. Restivo stated that Ms. Ishmael visits the Church Ave. location “maybe three, four times...maybe sometimes five. But she leaves there by 2 and she goes to other locations” (Tr. 276). However, there are very few employees to supervise or coach at the secondary locations after 2:00 p.m., and the majority of these secondary locations’ employees finish their work days by 3:00 p.m. At the eight secondary locations, only 13 employees work beyond 3:00 p.m. on any day. *See* Board Ex. 3. On Fridays, this number shrinks to four employees. Board Ex. 3. Bnei Torah, Ohr Moshe, Spinka, and Tzelim have no employees who work after 3:00 p.m. Board Ex. 3.

The Employer explained its organizational structure and claimed that its “management team” operated at a level above the individual locations and that each member of the “management team” had supervisory responsibilities at an unconfirmed number of sites. According to Ms. Restivo, Ms. Bazian is responsible for “four to five” locations (Tr. 275). The locations in addition to the Church Ave. location for which Ms. Bazian is responsible were not specifically identified. Ms. Restivo testified first that there were three Education Directors, then quickly revised her answer to four Tr. 139. When questioned about the number of sites each Education Director is responsible for, Ms. Restivo testified “roughly, could be four, could be five” Tr. 140. Notably, Ms. Restivo did not testify with any specificity regarding the identities of the three other Education Directors in addition to Ms. Skeete, or the additional three to four sites for which Ms. Skeete is responsible.

Since at least February, 2021, Ms. Skeete works at the Church Ave. location from 8:00 a.m. until 4:15 p.m., Monday through Friday (Tr. 264). Despite the Employers assertions otherwise, Ms. Griffith testified to her personal knowledge that the Church Ave. location’s

Education Director, Diann Skeete, did not have responsibilities for any other Project Social Care locations:

When Diann first started, she started off as teacher in one of the classrooms, so we worked there together. So outside of our professional relationship, we did build a personal friendship. I've never heard her, at any point in time, express that she's in charge of any other sites other than Project Social Care since being placed as the educational director.

(Tr. 199). Ms Skeete, Ms. Ishmael, and Ms. Bazian did not testify to clarify the record regarding their supervisory responsibilities at the secondary locations, if any.

The Employer asserted that it maintained central control of its operations by highlighting the PSCHS central office is the location from which all personnel and operational decisions of the enterprise originate and are implemented. Ms. Restivo testified that all decisions, at all times, emanate from the central office and that all employees are acquainted with the central office. These decisions include rates of pay and benefits, hiring practices, disciplinary procedures, policies regarding evaluations, work schedules, holidays, job descriptions. These decisions are apparently made by committee as all policies are determined by some combination of Ms. Restivo and the HR team, "fiscal," program directors According to Ms. Restivo, from the beginning of their careers employees are made aware that the central office is the nexus of control of the organization.

The Employer asserted that PSCHS's hiring process is such that "everything is done...at the main office" (Tr. 35). The Employer posts job listings in various locations, on websites, and the Employer uses recruitment agencies to facilitate candidate searches (Tr. 164). Prospective employees contact the main office and are then interviewed at PSCHS's central office by upper management and job offers are issued by the central office (Tr. 41). Upon hiring or during onboarding, the Employer distributes and reviews the employee's job description with the new employee (Tr. 44). In addition, during the hiring process the Employer tells each employee "about

all of our different locations of where we're located, and they can work at any one of those locations as long as they meet the credentials for that position” (Tr. 41).

Both Ms. Griffith and Ms. Lerice’s hiring and onboarding process diverted from the Employer’s asserted uniform practices. Ms. Griffith applied for the PSCHS position through the “Indeed” online web portal and was called for an interview by the then-director of the Church Ave. location, William Beaufort (Tr. 182). Mr. Beaufort interviewed her at the Church Ave. location (Tr. 183). Aside from Mr. Beaufort, Ms. Griffith did not interview or communicate with any other PSCHS manager (Tr. 183). Mr. Beaufort ultimately made the offer of employment to Ms. Griffith by email. P. Exh. 3. Mr. Beaufort signed her acceptance letter (Tr. 221). Ms. Griffith has never visited the central office location (Tr. 213). Ms. Griffith did not know the address of the central office (Tr. 222).

Ms. Lerice came to work at PSCHS by applying through a recruitment agency, Childcare Staffing. Ms. Lerice interviewed with Restivo at the PSCHS central office (Tr. 235). Ms. Lerice only visited that location on the day of her interview. After the interview, Ms. Lerice was notified by Childcare Staffing’s representative Aaron Kohn that PSCHS was interested in hiring her (Tr. 236). Mr. Kohn ultimately issued her offer letter through Childcare Staffing, rather than through PSCHS. P. Exh. 7. Ms. Lerice testified that upon hiring she entered into a “study plan” agreement wherein she agreed to take exams to obtain necessary certifications (Tr. 239). The agreement came in the form of a letter provided by Ms. Restivo with the Church Ave. location’s address included as the mailing address of the letter, not the Employer’s central office location where employees’ personnel records are kept. (Tr. 240; Tr. 75); P. Exh. 8.

Ms. Restivo stated that the Employer performs written performance evaluations at least on a yearly basis (Tr. 159). Both Ms. Griffin and Ms. Lerice testified that they have never received a

performance evaluation (Tr. 197; Tr. 243). Ms. Restivo stated that the Employer maintains a uniform disciplinary policy for all PSCHS employees at all locations (Tr. 59). She summarized the disciplinary procedure as:

The center director would speak with the program director, and would speak with us here at Project Social Care Head Start, Inc., at 1380 59th Street, and together, we would put together an action plan. And the disciplinary action would be what that individual -- you know, bringing to light and identifying what the issues were, and then what that individual should be doing to make some changes in their performance.

(Tr. 59). "Action plans" are written documents which are distributed to employees (Tr. 111-112). All employees facing disciplinary action are placed on action plans, unless there are extenuating circumstances such as physical harm towards a child (Tr. 112). The experience of Petitioner's witness, Ms. Griffith, does not comport with the Employer's asserted policy. Ms. Griffith testified that in January 2021 she received a disciplinary writeup from the then-Education Director Michelle Mingoia (Tr. 210). Ms. Mingoia delivered the writeup to Ms. Griffith, no one besides Ms. Mingoia signed the writeup (Tr. 210; Tr. 233). Ms. Griffith was not placed on any type of "action plan" (Tr. 210).

Ms. Restivo testified that the policy regarding vacations requests is such that employees submit requests to center directors, who then forward them to the central office for review (Tr. 149). The PSCHS employee handbook, dated March 2020, states requests for vacation must be forwarded "2 weeks in advance to your supervisor, who may approve or deny the request based on Agency needs." Emp. Exh. 13. While Ms. Griffith never received a copy of the employee handbook, her experience with requesting vacation time was in-line with its written policy. She testified that when she made vacation requests or if she had to call in sick, she submitted them to the Site Director or Education Director of the Church Ave. location, or Ms. Ishmael (Tr. 266). No

other manager was required to approve her vacation requests or sick leave requests (Tr. 266). Ms. Lerice similarly testified that vacation requests or requests to take time off for doctors appointments were submitted to and approved by the site director: “I received a paper. I filled it out. And I’d hand to [Mr. Beaufort]. I also take a picture and just send it as a email as a reminder. And then, I could get a copy signed, as approval” (Tr. 265). Either the site director or Ms. Ishmael signed to approve the requests (Tr. 266). To her knowledge, no other manager needed to approve vacation requests (Tr. 266).

Ms. Restivo testified that the hours of work are determined centrally by the management team at PSCHS’s central office. “[The management team] work together to determine the hours at each location, which are the same...number of hours” (Tr. 90). However, each of the employees in the petitioned-for unit work more hours than every employee of the secondary locations. Employees in the petitioned-for unit are universally scheduled for 42.5 hours per week. Board Exh. 3. The secondary locations’ average weekly schedules range from 19.3 hours (Spinka) to 32 hours (Bnos Chaya). Board Exh. 3. The secondary locations’ individual employees’ weekly schedules range from 9 hours per week (Kaila Altman, Tot Spot) to 40 hours per week (Zissel Herzsberg, Tot Spot), with an overall average of 24.4 hours per week with a median of 27 hours. Board Exh. 3. Only 13 of the employees of the secondary locations work beyond 3:00 p.m. on any day. Board Exh. 3. In addition to the strikingly different weekly schedules, Ms. Restivo testified that the Church Ave. location and the secondary locations observe different holidays, “depending upon demographic areas and what our staff celebrates” (Tr. 119). The Employer asserted that all PSCHS locations “have the same number of holidays,” (Tr. 88), however the Employer did not provide holiday schedules for any of the secondary locations.

The Employer asserts that PSCHS uses identical job descriptions and employee handbooks at all of its locations (Tr. 45; Tr. 86). The Employer produced job descriptions for various titles included in the proposed unit, including Food Handler, Family Worker, Teaching Assistant, and Teacher. Employer Exhs. 7, 9, 10; P. Exh. 9. Ms. Restivo testified that the job descriptions were created when the PSCHS program was created. Upon hiring or during onboarding, the Employer distributes and reviews the employee's job description with the new employee (Tr. 44). She stated:

Here at the central main office when we're hiring and when we're -- once they're hired, we go through what their job description is, and then the employee would sign it, and we would also sit with their direct supervisor, and that would be the center director and our program directors who oversee each individual site.

(Tr. 44-45). Job descriptions are sometimes revised and the job descriptions in evidence had been "revised recently" in January (Tr. 43, 50). She further testified that upon a job description's revision, "We sit with the employees, you know -- or at a minimum, email it. But we like to do it in person sitting with them, if there's any revisions that they should know about" (Tr. 52).

Despite the Employer's assertions that job descriptions are distributed at the time of hiring and then again when the job descriptions are revised, Petitioner's witnesses testified that they had never received a job description. Ms. Griffith testified that she did not receive the job description at the time of her hiring and had never received a copy of the job description until on or about March 25 or March 26, 2021 (Tr. 190). Ms. Lerice similarly testified that she had also never received a job description. She further testified that the "consultants" hired by the Employer who were brought in to "talk to us about the union" admitted that "[the consultants] were amazed that we did not have the job descriptions and they said we would have gotten them within a week. And within a week, that was last week" (Tr. 253). Neither Ms. Griffith nor Ms. Lerice ever received a copy of the PSCHS employee handbook (Tr. 189; Tr. 238).

ARGUMENT

POINT I

THE EMPLOYER FAILED TO MEET ITS BURDEN TO REBUT THE PRESUMPTIVE APPROPRIATENESS OF THE PETITIONED-FOR SINGLE LOCATION UNIT OF THE CHURCH AVENUE LOCATION.

The National Labor Relations Act (hereinafter the “Act”) empowers the Board to determine what constitutes an appropriate bargaining unit. See 29 U.S.C. § 159 (b). The Board’s mandate is to determine *an appropriate* bargaining unit not *the most appropriate bargaining unit*. As stated in *RB Associates*, “the [Act] does not require that a unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit. Rather, the Act requires only that the unit be appropriate, that is, appropriate to insure to employees in each case the fullest freedom in exercising the rights guaranteed by this Act.” *RB Associates*, 324 NLRB 874, 877 (1997)(citing *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950)). “The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employees.” *Bartlett Collins Co.*, 334 NLRB 484, 484 (2001). The Board has consistently held that a single-facility unit is presumptively appropriate. *Hilander Foods*, 348 NLRB 1200 (2006). The Board’s procedure for determining an appropriate unit is to examine the petitioned for unit, and, if that unit is appropriate, end the inquiry. *Bartlett Collins Co.*, 334 NLRB 484 (2001).

To rebut the presumptive appropriateness of a single-location unit, the Employer must show that the single petitioned-for unit “has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that is has lost its separate identity.” *North Hills Office Services*, 342 NLRB 437, 444 (2004)(citations omitted). The Employer may rebut this presumption by proving that there exists “central control over daily operations and labor relations; similarity of

employee skills, functions, and working conditions; and interchange and distance between locations.” *J&L Plate*, 310 NLRB 429 (1993).

I. Central Control, Supervision, and Local Autonomy

As stated previously, a single location unit is presumptively appropriate. The petitioned-for unit, encompassing only employees at the Church Ave. location, is presumptively appropriate and the Employer bears the burden of rebutting the presumption. The Employer asserts that a multilocation unit, which includes eight additional sites allegedly directly operated by PSCHS, is more appropriate. The Employer maintains that the multilocation unit is more appropriate chiefly based on the alleged central control of PSCHS’s labor relations and employment practices and the commonality of supervision between the Church Ave. location and the secondary locations. The Employer bears the burden of rebutting the presumption of appropriateness. In this case, the Employer failed to provide credible evidence that its labor relations practices, if indeed they existed prior to the hearing, are equally applicable to all of the Employer’s locations and they are uniformly implemented. They further failed to offer credible evidence that there is any actual commonality of supervision between the nine locations. “The party opposing the single-facility unit has the *heavy burden* of rebutting its presumptive appropriateness.” *Trane*, 339 NLRB 866, 867 (2003)(emphasis added). In this matter, the Employer failed to meet its burden and failed to rebut the presumption of the appropriateness of the Church Ave. location as a single location unit.

The Employer asserts that a multi-location unit is more appropriate because of the personnel policies established at the PSCHS central office. Based on the evidence and testimony presented by Petitioner’s witnesses, many of the Employer’s centrally-created and centrally-controlled personnel and labor relations policies are not followed at the Church Ave. location in the manner in which the Employer’s witness averred. Ms. Restivo testified in absolutes; however,

the Union's witnesses clarified that the alleged uniform policies among all PSCHS locations are not communicated to staff at the Church Ave. location and not enforced in the uniform manner described by the Employer. These include policies and practices regarding evaluations, employees' hours and holidays, job descriptions, employee handbooks, the manner in which time off is requested and granted, and the procedures for discipline. These tasks are delegated to the frontline supervisors at the Church Ave. location, discrediting the Employer's assertion that control of all labor relations and personnel functions is solely vested in the PSCHS management team at the central office.

At the outset it must be noted that though much of the administrative work of PSCHS is handled centrally at the PSCHS central office, this centralized administrative structure is not in and of itself dispositive of the inappropriateness of a single-location unit. PSCHS is a "top heavy" organization with an array of managerial employees who operate out of the central office and perform administrative functions for all PSCHS locations. Emp. Exh. 1. In *RB Associates*, prior to evaluating of the *J&L Plate* factors, the Regional Director addressed that necessity of considering the Employer's organizational structure:

In evaluating issues regarding the appropriateness of a single-location unit, although the Board must take into consideration the organizational structure of the employer's operation, such structure is not controlling. The Board must balance the needs of employee organizational activities against possibly competing interests of an employer. While an employer has an expectation of "reasonably adequate protection from the disruptive effects of piecemeal unionization," the Board must also "assure to employees the fullest freedom in exercising the rights guaranteed by the Act."

RB Associates., Inc. , 324 NLRB 874, 878 (1997)(internal citations omitted). In this case, that PSCHS is organized around a central administrative core for all PSCHS locations is of no moment as to whether a multilocation unit is more appropriate.

The central control of labor relations, by itself, is not enough to rebut the presumptive appropriateness of the petitioned-for single location unit, especially when there exists other factors weighing in favor of the single-location presumption. *See Kapok Tree Inn, Inc.* 232 NLRB 702, 703-704 (1977)(“although the Employer's operations evidence the centralized administration that is often characteristic of multifacility enterprises, such centralized administrative control does not by itself militate against finding the single facility to constitute an appropriate unit.”); *New Britain Transportation Co.*, 330 NLRB 397 (1999)(“centralized control over personnel and labor relations alone...is not sufficient to rebut the single-location presumption where the evidence demonstrates significant local autonomy over labor relations”). Numerous other factors in this case including supervision and level of local autonomy, differences in working conditions, the lack of interchange between the locations, and a lack of any bargaining history militate towards affirming the presumptive appropriateness of the petitioned-for single location unit.

In determining the functional integration of multilocation units, the commonality of supervision between the locations and each location's local autonomy are frequent and important considerations. In this case, local autonomy and common supervision among the Church Ave. location and the secondary locations are intimately intertwined as the individuals who serve as frontline supervisors at the Church Ave. location allegedly have supervisory functions at the secondary locations. However, there is little—if any—credible evidence that the current frontline supervisors at the Church Ave. location have any supervisory duties at other locations. Both Ms. Griffith and Ms. Lerice identified Ms. Skeete and Ms. Ishmael as their primary supervisors, with Ms. Bazian serving in an occasional supervisory role. Petitioner's witnesses did not identify any other PSCHS employee who serves in a front-line supervisory role. In addition, the record reflects that the frontline supervisors identified by Ms. Griffith and Ms. Lerice perform routine labor

relations functions such as reviewing and approving vacation requests, performing minor disciplinary interventions, and participating in hiring decisions.

In *Esco Corp.*, the Board stated that a “significant” factor that militated against a multi-location unit that the employer relied on a specific “lead man” based on the petitioned-for site to supervise its day-to-day operations, and noted that “the Employer’s managers are not onsite and visit only infrequently.” *Id.* at 840. In *New Britain Transportation Co.*, the Board found that there was a sufficient degree of local autonomy in part when frontline supervisors had the power to “approve time off, short-term vacation, and sick leave” and to “address minor disciplinary problems.” *New Britain Transportation Co.*, 330 NLRB 397, 297 (1999). The Board consistently holds that when frontline supervisors perform routine, minor labor relations functions, sufficient local autonomy may be found to support the presumptive appropriateness of a single location unit:

In *Renzetti's Market*, despite centralization of and similarity of employee skills, functions, and pay, the Board found a single-facility unit to be appropriate where immediate supervisors issued oral warnings, granted leave requests, and participated in hiring and discharge decisions. This level of involvement, according to the Board, was not routine but "demonstrate[d] meaningful local autonomy and participation in matters directly affecting the service representatives' working lives."

Hilander Foods, 348 NLRB 1200, 1203 (2006)(citing *Renzetti's Market*, 238 NLRB 174, 175 (1978))(internal citations omitted).

The record reflects that PSCHS grants frontline supervisors at the Church Ave. location discretion to perform important personnel functions and have a key role in the day-to-day supervision of their centers. Ms. Restivo testified, that while center directors are in communication with PSCHS management employees, “the center director is there that is responsible to ensure the center is running effectively throughout the course of the day” (Tr. 34).

While final decisions to hire or fire may be made at the central office level, the Church Ave. location's frontline supervisors participate in the decisions to hire employees. In *Penn Color*, the Board noted that "although plant managers do not have the final say on hirings or firings, they do interview prospective applicants, and their recommendations as to both hiring and firing are accorded considerable weight in the Company's decision-making process," and found that their involvement was a "factor supporting the appropriateness of a single-plant unit." *Penn Color Inc.*, 249 NLRB 1117, 1119 (1980). In this case, it is clear from Ms. Griffith and Ms. Lericé's experience that site directors have a significant role in the decision to hire, whether by effectuating the hiring themselves or by making recommendations to the central office.

For Ms. Griffith's hiring, Mr. Beaufort was the only PSCHS employee who interviewed Ms. Griffith, which occurred at the Church Ave. location rather than the PSCHS central office. Mr. Beaufort ultimately sent her an offer letter, which he signed. No other PSCHS managers were directly involved. For Ms. Lericé's hiring, Mr. Beaufort performed a second informal interview after Ms. Restivo interviewed Ms. Lericé (Tr. 270). After the informal second interview, Mr. Beaufort called Ms. Restivo to report that "he thought [Ms. Lericé] would work out well" if she could be hired at the Church Ave. location (Tr. 270). Ms. Restivo agreed, and Ms. Lericé was hired (Tr. 270).

Likewise, frontline supervisors participate in the decision as to whether discipline an employee, whether by recommending that disciplinary action be taken or by effectuating discipline themselves. Ms. Restivo summarized the disciplinary process: "if the center we work with is speaking with the program director and feels as though there's a need to fire or to have that conversation with an employee, they speak directly to the program directors and -- and they would work out a plan among themselves" (Tr. 35). However, based on the record it is also clear that the

Church Ave. location's frontline supervisors also have power to effectuate discipline on their own. Ms. Griffith testified that when she received a writeup for an alleged disciplinary infraction, the writeup was signed by the then-Site Director Ms. Mingoia. No other manager from the central office signed the writeup or participated in the creation of an "action plan" to remedy the alleged misconduct for the long term.

Evaluations—when they are given—are completed by frontline supervisors. Ms. Restivo testified that an evaluation form is created at the PSCHS central office, (Tr. 159), that form is actually completed by the locations center director:

Annual evaluations, they are done by the -- the center director knows the -- the teachers the best because they're there every single day, right. So they have input, but she calls upon the program director to sit in with her at times to go over the evaluations with them.

(Tr. 159). While input is given by other management employees, including education managers and the Program Director, (Tr. 160), it is ultimately the center director's responsibility to fill out the annual evaluation form (Tr. 160).

Finally, employees submit requests for vacation and requests for other time off to frontline supervisors at the Church Ave. location. Historically, these requests are approved by the Site Director or other frontline supervisor. The employee handbook likewise grants frontline supervisors the power to "approve or deny the request based on Agency needs." Emp. Exh. 13.

In addition to the frontline supervisors' performance of routine labor relations functions including hiring, vacation and sick leave requests, and discipline, there is also local autonomy with regards to the actual method and means of providing the Employer's chief service, Headstart education and enrichment. At the Church Ave. location, at the site of service, the Church Ave. location's employees operate with minimal oversight in their day-to-day work. While the

Employer provides an off-the-shelf commercial curriculum, it is left to each individual Teacher or Teaching Assistant to write their own lesson plans. There is significant local autonomy in the development, supervision, and implementation of lesson plans. Ms. Restivo stated that while the curriculum is standard,

Teachers have the flexibility to be creative, whichever the way that they want to implement it, which -- that makes every classroom, you know, unique and based upon the needs of your children, right? So maybe some activities may be different, but you're still addressing what's in the curriculum to be completed. But they do have that flexibility to be creative as an educator.

(Tr. 155). Teachers or Teacher Assistants submit their lesson plans for management's review. Ms. Griffith testified that management doesn't write lesson plans, but "they would review it at the end of the teach writing it to let you know...whether or not certain things aren't developmentally appropriate" (Tr. 193). Lesson plans are submitted to the Church Ave. location's frontline supervisor for review, Ms. Skeete, Ms. Ishmael, and Ms. Bazian (Tr. 227). However, lesson plans are not universally returned with comment or approval. Ms. Lerice testified that she submits lesson plans to management, but does not receive feedback (Tr. 243). Kerry Rush, identified as an Education and Inclusion member, occasionally visits the Church Ave. location and serves as an "coach" to new employees. However, the record does not reflect that she has a significant role in determining the teachers' day-to-day lesson plans (Tr. 276).

The record bears out that Ms. Skeete and Ms. Ishmael are the primary frontline supervisors at the Church Ave. location. There is no credible evidence in the record that the Church Ave. location's employees have significant supervision from any other PSCHS managerial employees. There is no credible evidence that Ms. Skeete and Ms. Ishmael have supervisory responsibilities at the secondary locations. The only evidence in the record that Ms. Skeete and Ms. Ishmael have

supervisory responsibilities outside of the Church Ave. location is the conclusory testimony of Ms. Restivo. The schedules of Ms. Skeete and Ms. Ishmael bear out that their primary (if not their only) function is to serve as the supervisors of the Church Ave. location. They are at the Church Ave. location for the majority of each day, for the majority of each week. Ms. Restivo testified that Ms. Skeete and Ms. Ishmael leave the Church Ave. location at approximately 2:00 p.m. to visit the other sites for which they are responsible (Tr. 276). Ms. Griffith stated that Ms. Ishmael works at the Church Ave. location between 9:00 a.m. and 10:00 a.m. until at 2:00 p.m., Monday through Friday (Tr. 212). Since at least February, 2021, Ms. Skeete works at the Church Ave. location from 8:00 a.m. until 4:15 p.m., Monday through Friday (Tr. 264).

At the eight secondary locations, only 13 employees work beyond 3:00 p.m. on any day. *See* Board Ex. 3. On Fridays, this number shrinks to four employees. Board Exh. 3. Bnei Torah, Ohr Moshe, Spinka, and Tzelim have no employees who work after 3:00 p.m. Board Exh. 3. While the secondary locations are geographically relatively close to the Church Ave. location the realities of New York City traffic dictate that travel time may be significant even for relatively short distances. Therefore assuming, *arguendo*, that Ms. Skeete and Ms. Ishmael do oversee other PSCHS locations, it must be inferred that Ms. Skeete and Ms. Ishmael provide only minimal oversight of the other locations' employees.

Ms. Griffith's testimony further belies the Employer's assertion that its managerial employees, including Education Directors, have assignments at secondary locations. Ms. Griffith testified that the Church Ave. location's Education Director, Diann Skeete, did not have responsibilities for any other Project Social Care locations:

When Diann first started, she started off as teacher in one of the classrooms, so we worked there together. So outside of our professional relationship, we did build a personal friendship. I've

never heard her, at any point in time, express that she's in charge of any other sites other than Project Social Care since being placed as the educational director.

(Tr. 199).

Ms. Restivo testified that management employees holding the titles of Education Director, Disability/Mental Health Coordinator, Health Service Coordinator, and Nutrition Manager visit each PSCHS site on a weekly basis (Tr. 33). However, Ms. Griffith testified that she had never seen an individual holding the title of Disability/Mental Health Coordinator Health Services Coordinator at the Church Ave. location (Tr. 201). She testified that she had heard of a nutritionist but had never seen that person at the Church Ave. location (Tr. 201). Ms. Lerice testified that she likewise had never seen an individual holding the title of Health Services Coordinator or Nutrition Manager at the Church Ave. location (Tr. 244-245). The only individual she knew who held a title related to disabilities is the frontline supervisor Nikkita Ishmael, but did not identify her as the Disability/Mental Health Coordinator (Tr. 244). Both Ms. Griffith and Ms. Lerice testified that they had only seen Ms. Restivo at the Church Ave. location on only a handful of occasions during their years as PSCHS employees.

The Employer failed to produce Ms. Skeete, Ms. Ishmael, or Ms. Bazian to clarify their responsibilities with regards to other facilities and the degree to which they are behold to the central office's dictates. The "familiar rule, accepted by the Board, that when a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge. In particular, it may be inferred that the witness, if called, would have testified adversely to the party on that issue." *International Automated Machines*, 285 NLRB 1122 (1987) (citations omitted).

In this case, an adverse inference must be drawn against the Employer for its failure to produce witnesses who may reasonably be assumed to be favorably disposed to the Employer. The

witnesses who may reasonably be assumed to be favorably disposed to the Employer include, but are not limited to Nikkita Ishmael, Diann Skeete, Elianna Bazian, Walter Lader, Kerry Rush, Chelsea Zhang, and Samarra Meade. In addition, the Employer failed to produce the unnamed individuals who hold titles including Health Services Coordinator, Nutrition Director, and the three additional Education Directors beyond Ms. Skeete. The Employer identified these individuals as having common supervisory or managerial responsibilities at all PSCHS locations, or are in charge of labor relations and personnel policies. This information is relevant and necessary for the Employer to rebut the presumption of appropriateness, however their testimony is not in the record.

Based on the foregoing, it is clear that the Church Ave. location has a significant degree of local autonomy and that there is no common supervision between the Church Ave. location and the secondary location. These combined factors militate toward the appropriateness of a single location unit.

II. **Working Conditions**

The conditions of employment between Church Ave. and the secondary locations are markedly different. In *V.J. Elmore 5¢, 10¢, and \$1.00 Stores, Inc.*, the Board held that a single location unit was appropriate due to the difference in hours and the lack of interchange of employees between the petitioned-for unit and the secondary locations proposed by the employer. *V.J. Elmore 5¢, 10¢, and \$1.00 Stores, Inc.*, 99 NLRB 1505 (1951). In *V.J. Elmore*, the Board found that the single location was appropriate due to there being “almost no interchange of clerks from store to store within the district,” and the fact that “hours of work vary from one store to another, as they depend upon custom in the local community,” despite the centrality of many other labor relations functions. *Id.*

Each of the Church Ave. location's employees more hours than every employee of the secondary locations. Employees in the petitioned-for unit are universally scheduled for 42.5 hours per week. Board Exh. 3. All employees of the Church Ave. location start their work days at 7:45 a.m., earlier than the employees of the secondary locations. Board Exh. 3. The Church Ave. location's employees' work day ends later than all but two of the secondary locations' employees. Board Exh. 3. The employee handbook grants a 1-hour unpaid lunch break to employees who work a shift of more than 6-hours. Emp. Exh. 13. Even accounting for this 1-hour unpaid lunchbreak, *all* of the Church Ave. location's employees work more hours than the employees of the secondary locations. *See* Board Ex. 3. The vast majority of the secondary locations' employees do not work past 12:00 p.m. on Fridays.

In addition to the strikingly different weekly schedules, Ms. Restivo testified that the Church Ave. location and the secondary locations observe different holidays, "depending upon demographic areas and what our staff celebrates" (Tr. 119). When questioned about the difference between the holiday calendars of the Church Ave. location and the secondary locations, Ms. Restivo explained that the staff and population served by the secondary locations needed accommodations for different religious holidays than the employees at the Church Ave. location: "[the Church Ave. location's employees] wouldn't want Rosh Hashanah, they would want Christmas Eve, New Year's Eve, right?... I made the calendars for them, and for sure they would want it, because that's their -- I know I would want Christmas Eve and Christmas Day" (Tr. 124-125).

In *Centurion Auto*, the Board stated that "the party challenging the appropriateness of a single-facility unit 'must be able to show that the day-to-day interests of the employees at the single location have merged with those of the employees at the other location.'" *Centurion Auto*

Transport Inc., 329 NLRB 394, 400 (1999) (internal quotations omitted). While “day-to-day interests” may reasonably be abstracted to the most basic level to mean pay, benefits, and working conditions, the foundational “day-to-day interest” of employment is the time an employee must actually be at work to perform services for the employer. In this regard, it is clear that the “day-to-day interests” of the employees at the Church Ave. location and the employees at the secondary locations are not merged. The secondary locations’ employees work substantially different (and for the most part, less) hours and weekly schedules than the Church Ave. location’s employees. Their yearly schedules differ in the holidays given to employees based on the demographics of the staff and the populations served by the secondary locations.

The extreme difference in working hours and difference in holidays are evidence of a difference in the day-to-day interests between the Church Ave. location employees and the secondary locations’ employees. Therefore, this factor weighs in favor of a single location unit.

III. **Interchange**

There is no interchange or even interaction between the Church Ave. location and the secondary locations. Petitioner’s witnesses did not even know of the existence of the secondary locations until the Employer filed its statement of position. The evidence presented bears out that at every opportunity for interchange or interaction, e.g., transfers, substitutions, and trainings, the employees of the Church Ave. location and the secondary locations do not come into contact.

In determining whether “functional integration” exists, the minimal—or nonexistent—extent of employee interchange is a frequent consideration given substantial weight, even when other factors weigh in favor of a multilocation bargaining unit. In *Esco Corp.*, the union petitioned to represent employees in a single-location unit. *Esco Corp.*, 298 NLRB 837 (1990). The employer contended that a multi-location was appropriate and that employees from its secondary locations

must be included. *Id.* The Regional Director found, and the Board affirmed, that the unit limited to the single petitioned-for location was appropriate and that the Employer failed to rebut the presumption of appropriateness. *Id.* in *Esco Corp.*, the Board recognized that the Employer's administrative operations and its labor relations policies were centrally determined, several factors militated against a multi-location unit. *Id.* The Board weighed the factors enumerated in *J&L Plate* and affirmed the Regional Director's determination, stating:

The lack of regular and substantial interchange or contact between [the petitioned-for location's employees] and the employees at other locations plus the great distances between locations outweigh the centralized operations and labor relations, limited local autonomy, and the common skills and functions of the employees at [all of the Employer's locations].

Id. at 840. In *RB Associates*, the employer failed to rebut the presumption of a single facility unit in part because the evidence showed that "the interaction between the petitioned-for employees and those the employer would seek to include is irregular and sporadic." *RB Associates*, 324 NLRB 874, 878. (1997). In *Red Lobster*, the Board upheld the Regional Director's finding of single-location's appropriateness in part because of the minimal interchange between locations. *Red Lobster*, 300 NLRB 908. At the location where the most interchange that occurred only "19 employees out of a work force of 85 employees were affected by a temporary work assignment during 1988, usually for very short periods of time." *Red Lobster* 300 NLRB 908, 911 (1990). In *J&L Plate*, the Board found that 20 temporary transfers in 3-4 years between the Employer's two locations and that there was "virtually no evidence of contact between employees of the two plants" militated against a finding of functional integration. *J&L Plate*, 310 NLRB 429, 430 (1993).

In this case, there is clearly *no interchange* between the Church Ave. locations and any of the secondary locations. There is no evidence that employees of any of the secondary locations ever come into contact with the employees of the Church Ave. location. There have been no transfers to or from the Church Ave. location since its inception. The Employer uses a staffing agency to find substitute teachers to cover classrooms when employees call out sick rather than make temporary transfers between locations. Employer-sponsored professional development trainings are attended only by the Church Ave. location's employees and its supervisors. Indeed, the locations are so siloed from each other that the employees of the Church Ave. location did not even know that the secondary locations existed until the Employer filed its statement of position in this matter.

It must also be noted that the employees of the Church Ave. location had no idea that PSCHS operated other locations until the Employer filed its statement of position. The Employer testified that at an employee's interview, "[hiring managers] tell them about all of our different locations of where we're located, and they can work at any one of those locations as long as they meet the credentials for that position" (Tr.41). Both Ms. Griffith and Ms. Lerice testified that they had no idea that other locations existed until the instant proceedings. Significant weight should be given to the workers' knowledge of their employer's operations when making a determination of functional integration. An Employer's operations cannot be considered integrated to such a degree that the individual location lost its separate identity when employees of an organization—such as those of the Church Ave. location—*do not know that they are part of a larger whole*.

Based on the foregoing, there is absolutely no interchange of employees between the Church Ave. location and the secondary locations. That there is no interchange of employees weighs heavily in favor of the appropriateness of a single location bargaining unit.

IV. **Bargaining history**

A history of multi-location bargaining is a factor that militates towards the appropriateness of a multi-location bargaining unit. *See e.g., AVI Foodsystems Inc.*, 328 NLRB 426 (1999). In this case there is no history of collective bargaining at PSCHS. No PSCHS location has ever been represented by a union (Tr. 95). Therefore, this factor weighs in favor of the appropriateness of a single location bargaining unit.

POINT II

DUE TO THE ONGOING COVID-19 PANDEMIC AND ACTIVE OUTBREAK AT THE CHURCH AVE. LOCATION, THE ELECTION MUST BE HELD BY MAIL BALLOT.

Due to the ongoing COVID-19 pandemic, the Regional Director must order an election held via mail ballot. The Employer contends that an in-person, manual ballot election is appropriate. Under the Board's *Aspirus Keweenaw and Michigan Nurses Association* test, a mail ballot election is the most appropriate in this matter. Moreover, a manual, in-person election, while New York City—including Brooklyn—is still experiencing a citywide positivity rate of **6.79%** creates a threat to the health and safety of the eligible voters, and the Board agent tasked with conducting the election. Board Exh. 4. Kings County is currently at **6.93%** positive COVID-19 infection rate. Board Exh. 4.

In *San Diego Gas*, the Board held that it is fully within the discretion of the Regional Director to order a mail ballot election under “extraordinary circumstances.” There is no doubt that the current COVID-19 pandemic constitutes extraordinary circumstances. Recently, in *Aspirus Keweenaw and Michigan Nurses Association* the Board promulgated the following factors/ to be applied by the Regional Director in determining whether a mail ballot election is appropriate given the extraordinary circumstances of the COVID-19 pandemic:

1. The Agency office tasked with conducting the election is operating under “mandatory telework” status.
2. Either the 14-day trend in the number of new confirmed cases of COVID-19 in the county where the facility is located is increasing, or the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher.
3. The proposed manual election site cannot be established in a way that avoids violating mandatory state or local health orders relating to maximum gathering size.
4. The employer fails or refuses to commit to abide by GC Memo 20-10, Suggested Manual Election Protocols.
5. There is a current COVID-19 outbreak at the facility or the employer refuses to disclose and certify its current status.
6. Other similarly compelling considerations.

Aspirus Keweenaw and Michigan Nurses Association, 370 NLRB No. 45 (2020)

If any *one* of these factors is present (only one is sufficient), then the Board must find a mail ballot election to be appropriate. *Id.* at 5. (Emphasis added). Factor two, provides that a 14-day increase of positive COVID-19 cases or a 5% infection rate in the geographic region should lead to a mail ballot election. *Id.* PSC Head Start is located in Kings County, which, as of March 17, 2021, had a borough-wide average positivity rate of 6.93%. Board Exh. 4. The positivity rate for Kings County has been above 6% for the entirety of 2021. Board Exh. 4. Therefore, factor 2 has been met – the infection rate exceeds 5% in Kings County and has exceeded 5% for more than four months.

Furthermore, the Employer has failed to meet the requirement stipulated by the Board in *Aspirus* under the 4th situation of a possible outbreak of COVID-19 at the facility:

For the duration of the pandemic, we require that in all cases where a party requests a manual election, the employer shall certify, by affidavit, as part of its submission regarding election arrangements, how many individuals present in the facility within the preceding 14 days have tested positive for Covid-19 (or are awaiting test results, are exhibiting characteristic symptoms, or have had contact with anyone who has tested positive in the previous 14 days).

Id. at 8.

Here, the Employer has demanded a manual election, but has not provided any such documentation, and no affidavits as part of its submission. *See* Board Exh. 3. Therefore factor 4 had been met.

In addition, The Church Ave. location is experiencing an ongoing active outbreak. The Employer admitted that “Unfortunately, like many programs, we are experiencing, just recently, actually, a little bit of a COVID outbreak” (Tr. 102). The active outbreak resulted in the entire center being shut down for nine days from March 5, 2021 to March 14, 2021 (Tr.102). Following the Church Ave. location’s total closure, individual classrooms have been shut down due to teachers being infected with COVID-19. Ms. Restivo testified that “if a teacher is sick, unfortunately, and is tested positive, you know, by the Department of Health, we have to close that classroom. We don't have to close all classrooms, but we do have to close that classroom and notify, like I mentioned earlier, the -- the families, and children, and the other staff members” (Tr. 103). Because numerous employees have fallen ill with COVID-19 recently, and the entire facility was shut down for quarantine in March, in addition to individual classrooms being shut down when individual teachers become ill, factor 5 is met.

In conclusion, it is undeniable that we are currently operating under extraordinary circumstances as the COVID-19 pandemic continues to ravage the country. The Board held in *Aspirus* that just *one* of the situations articulated by the Board would support the decision to hold the election by mail ballot. Here, the 14-day average infection rate in Brooklyn and all of New York City exceeds 5%. The Employer failed to provide any mandated affidavits and documentation regarding COVID-19 in the facilities. In addition, and most compellingly, there is has been an active outbreak at the petitioned-for Church Ave. location. Applying the factors announced by the Board in *Apsirus*, it is clear that a mail-in ballot election is not only appropriate

but the only logical and safe choice given the fact that there eight separate sites and under the extraordinary circumstances of the worldwide pandemic.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests the Regional Director issue an immediate Determination and Direction of Election that the appropriate unit is the single location petitioned-for unit and that the election be held via mail ballot.

Dated: Brooklyn, New York
April 20, 2021

Respectfully submitted,

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By: Seth York
Assistant General Counsel

The Employer offers professional development (“PD”) trainings to the employees of the Church Ave. location several times per year. Prior to the COVID-19 pandemic, these PD trainings were held off site at rented event spaces (Tr. 216). During the pandemic, PD trainings are held via the Zoom videoconferencing system (Tr. 248). Ms. Restivo testified that these PD trainings were

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

THE CHILDREN'S VILLAGE

Employer

and

Case 29-RC-275629

**SPECIAL PATROLMAN BENEVOLENT
ASSOCIATION**

Petitioner

and

DISTRICT COUNCIL 37, AFSCME, AFL-CIO

Intervenor

DECISION AND DIRECTION OF ELECTION

The Employer, The Children's Village, provides social services to children and youth at several facilities, including the Staten Island Promise facility on Staten Island, New York. On April 15, 2021¹, Special Patrolman Benevolent Association (Petitioner) filed a representation petition with the National Labor Relations Board (the Board) under Section 9(c) of the National Labor Relations Act (the Act). Petitioner seeks to represent a unit of approximately 17 Youth Care Workers. Petitioner contends that the Youth Care Workers are guards within the meaning of Section 9(b)(3) of the Act.

The Intervenor is the currently certified collective bargaining representative of the Youth Care Workers at issue here. This unit of full-time and regular part-time Youth Care Workers, excluding all other employees, guards and supervisors, was certified in 2016. That certification was the result of a stipulated election. The question of whether the Youth Care Workers are guards within the meaning of Section 9(b)(3) of the Act was never litigated and no determination on that issue has been made. There is no collective bargaining agreement in place. Both the Employer and Intervenor maintain that Youth Care Workers are not guards within the meaning of the Act. They also assert that a manual ballot election is appropriate, while the Petitioner is willing to proceed to an election either manually or by mail.

On May 5, Hearing Officer Ioulia Fedorova conducted the hearing in this matter by videoconference, during which the parties were invited to present their positions and supporting evidence. All parties submitted post-hearing briefs that have been duly considered.²

¹ All dates herein are 2021 unless otherwise specified.

² The Intervenor filed a document titled "Petitioner's Post-Hearing Brief." After the first few pages, the brief seems to relate to an entirely different case. The brief cites testimony from witnesses that did not testify at the hearing in this matter. It references a "Church Ave." location of an employer called PSCHS and contains legal authority and argument regarding the appropriateness of a single vs. multi-location unit instead of the issue presented in this case. In short, it appears that this document was filed in error.

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. Based on the entire record in this proceeding and consistent with relevant Board law, I find that the employees in the petitioned-for unit are not guards within the meaning of the Act. Because there is no contract bar, an election can proceed unless the Petitioner elects to withdraw its petition. In light of the continuing COVID-19 pandemic³, for the reasons described more fully below, I am directing a mail ballot election.

The Employer's Operation

The Employer operates a number of nonsecure placement facilities (NSPs) for children, including Staten Island Promise (the Staten Island facility). The Employer operates these facilities pursuant to contracts it has with the New York City Administration for Children's Services (ACS) and the New York State Office of Children and Family Services. The Staten Island facility is part of a program called "Close to Home," and is designed to place children in residential facilities close to their families in New York City rather than in remote facilities in upstate New York. In March 2020, ACS designated the Staten Island facility as a COVID-19 isolation/quarantine site and directed the facility to also accept Child Welfare placements, as well as placements through the Close to Home initiative.

The highest-ranking employee at the Staten Island facility is the Division Director, who is responsible for the site. Reporting to the Division Director are an Assistant Site Director and a Clinical Director. The Clinical Director supervises an unspecified number of social workers, case workers and family resource workers. The Assistant Site Director oversees two supervisors who, in turn, supervise four assistant supervisors. The Youth Care Workers report to those four assistant supervisors.

The facility, owned by the State of New York, has two buildings situated on an acre and a half of land. One of the buildings contains administrative offices, classrooms, a dining area, laundry facilities and two residential wings or "units." Each unit contains a common area and ten single occupancy residential rooms. The other building houses a gymnasium, library, and classroom. There is no gated or secure entrance to the property or to the parking lot. When the Employer took over operations⁴, the site already had a number of access controls in place, including doors that must be accessed by key cards, keypads and video-monitored "buzzers," which will be discussed in more detail herein.

Youth Care Workers

The Employer's Vice-president of Residential Programs and Support Services, Richard Gallwey, testified that Youth Care Workers are responsible for the safety and well-being of residents and provide round the clock "eyes-on, ears-on supervision of all activities and functions." Record evidence shows that Youth Care Workers have a number of responsibilities, including supervising and interacting with residents to improve their behavior and interpersonal

³ Throughout this decision, the terms "COVID-19," "COVID," "Coronavirus" and "pandemic" are used interchangeably.

⁴ There is no record evidence of when the Employer assumed operations at the Staten Island facility.

skills. They facilitate recreational activities, like sports, games and arts and crafts, and engage with residents to help them build life skills and develop goals.

All new employees, including Youth Care Workers, undergo two weeks of training on a number of topics including children's rights, OSHA, HIV, and therapeutic intervention training. At the Staten Island facility, employees spend three days in training on safe crisis management techniques. This includes verbal de-escalation training and, if those verbal techniques prove unsuccessful, safe physical restraint techniques. All employees are photographed, fingerprinted and subject to background checks.

Former Youth Care Worker Delilah Fleming, who resigned two weeks before the hearing in this matter, testified that when residents became argumentative with other residents or staff, Youth Care Workers are trained to verbally de-escalate the conflict first. If that doesn't work, they are trained to physically restrain the child by holding his or her upper torso so that movement is constrained. Fleming described this procedure as "a move that we use to calm the children down...It's just a little uncomfortable and it helps calm them down." She estimated that she had to resort to using physical restraints once or twice a week. Fleming testified that she was also trained in positive behavior intervention. For example, if a resident did not like the food they were served and started to act out, she would ask the child if they wanted something different. Sometimes these techniques might not work and, as Fleming stated, the child might still "throw the plate."

Residents are not allowed to come and go on their own. Before the pandemic, Youth Care Workers accompanied residents on outings in and around New York City. Since the facility is now a quarantine site, all residents have either tested positive for COVID or are awaiting test results. They generally stay on the unit for 14 days and do not leave the facility. At any given time, some of the residents might have criminal backgrounds and, if they do, Youth Care Workers are notified. Residents may also have been removed from homes by Child Protective Services. At the time of the hearing, none of the approximately 20 residents had criminal backgrounds.

Employees have key cards and access to keypads that open certain areas of the facility. It is unclear whether Youth Care Workers must be buzzed into the entrances to the facility and into the units or if they can admit themselves with their keycards. However, visitors and others are required to be buzzed in. There is no security booth at the facility. Rather, there is a reception area staffed by supervisors and administrative assistants. ACS requires the facility to be equipped with security cameras. The monitors for those cameras and the buzzers that open certain doors are located in the reception area. Youth Care Workers do not monitor the security cameras, operate the buzzers, issue visitors' passes or otherwise control access to the facility.

Youth Care Workers have two-way radios that they use to communicate with each other and with supervisors and management. Among other things, they communicate their location and the location of the residents they are accompanying. Prior to COVID, ACS required Youth Care Workers to use metal detecting wands to check incoming residents for contraband. Now, they just perform periodic pat-down searches since the residents do not routinely leave the facility. Youth Care Workers are also responsible for searching the units for contraband. These searches are required by ACS.

Youth Care Worker Ikea Thompson testified that she works the morning shift, 8:00 a.m. to 4:00 p.m. She stated that there were between five and seven Youth Care Workers on each shift. Monday through Friday, residents spend most of their time on her shift in school. She remains with them in the classroom and may accompany them to the gym, where she serves as “backup” for the Recreational Specialist. At the time of the hearing in this matter, the facility had been without a Recreational Specialist for about a week. Normally, he or she was responsible for posting the daily schedule of activities. Youth Care Workers are supposed to encourage residents to follow the scheduled program or to arrange for alternative activities.

Youth Care Workers are not required to submit any routine reports or daily logs. They may be expected to fill out an incident report if they directly witness events such as accidents, injuries, fights or an “attempted absence without consent.”

Youth Care Workers do not receive specialized security training. They do not carry weapons and they do not wear uniforms, badges or any other items identifying them as security personnel or guards. They are not responsible for enforcing any Employer policies with respect to other employees. They are not expected to use physical force in the event of a threat to security and they are not authorized to call the police. If such a need arises, they would report the issue to a supervisor, who would then determine whether to call law enforcement. Youth Care Workers are not bonded or deputized and would not provide security in the event of a work stoppage or strike.

Board Law and Analysis Regarding Guard Status of Youth Care Workers

Pursuant to Section 9(b)(3) of the Act, the Board shall not:

decide that any unit is appropriate... if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises....

Congress enacted this section of the Act out of a concern about conflicts of interest that might arise if guards were represented by unions that also represented non-guard employees. *Burns Security Services*, 300 NLRB 298, 299 (1990), enf. denied 942 F 2d 519 (8th Cir. 1991). As the Board noted in *The Boeing Company*, 328 NLRB 128, 130 (1999), Congress was particularly concerned about the role a disputed employee may play during a period of industrial unrest or strike by other employees of the employer. Congress sought to prevent conflicts that might arise if, during a strike by non-guard employees represented by the same union as guards, the guards were required to enforce security rules against their striking co-workers. *Id.*

To be considered a guard under the Act, an individual must enforce rules to protect the property of the employer's premises against employees and other persons. *Reynolds Metal Co.*, 198 NLRB 120, 120 (1972). Employees with mixed duties are guards where a portion of their time, and a significant portion of their job, is spent performing guard duties including enforcement of company rules. *Id.* Access to employer property, and admitting persons onto the property, is

insufficient to find guard status where the employees had no authority to enforce rules to protect property or persons. *Meyer Mfg. Corp.*, 170 NLRB 509, 509-510 (1968).

The Board has identified seven factors in determining guard responsibilities such as: (1) the enforcement of rules directed at other employees; (2) the authority to compel compliance with those rules; (3) training in weapons and security procedures; (4) possession of weapons; (5) participation in security rounds and patrols; (6) monitoring and controlling access to the employer's premises; and (7) wearing guard-type uniforms or displaying other indicia of guard status. *The Boeing Co.*, at 130; see also *Wolverine Dispatch, Inc.*, 321 NLRB 796, 798 (1996); *55 Liberty Owners Corp.*, 318 NLRB 308, 310 (1995); *Rhode Island Hospital*, 313 NLRB 343, 346 (1993).

It is not necessary that the alleged guards in fact enforce rules themselves in order to be considered guards within the meaning of the Act; the possession and exercise of the responsibility to observe and report infractions of rules to protect property and the safety of persons is sufficient. *The Wackenhut Corporation*, 196 NLRB 278, 279 (1972). As the Board explained in *Rhode Island Hospital*, the controlling factor in determining "guard" status is the nature of the duties of the alleged guard and not the percentage of time which the alleged guard spends performing these duties. Nevertheless, the Board in *Rhode Island Hospital* did consider whether the guard responsibilities were a "minor or incidental part" of the disputed employees' overall responsibilities. *Id.* at 347.

Based on the above authority, I find that Youth Care Workers are not guards. They do not enforce rules against other employees. They do not receive security training, carry weapons, or wear guard uniforms or insignia. While they do perform ACS-mandated contraband searches and fill out incident reports when they are witnesses to certain occurrences, they do not regularly make security rounds or patrols. Finally, Youth Care Workers do not monitor and control access to the facility. Record evidence reveals that Youth Care Workers must occasionally use physical restraints on residents to, as the Petitioner states, "break up fights." This, however, does not make them guards as defined by the Board. *Reynolds Metal Co.*, 198 NLRB at 120; *The Boeing Co.*, at 130.

Parties to the Election

Section 9(b)(3) states that "no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards." Although the Act specifically precludes certifying a union which represents non-guards as the bargaining agent for a unit of guards, the Board has found that the Act does not, on the other hand, bar the converse and has long held that "the Act does not prohibit the Board from certifying a labor organization which itself represents guards as the representative of employees other than guards." *Dynair Services, Inc.*, 314 NLRB 161, 161 (1994), citing *Pinkerton's National Detective Agency, Inc.*, 90 NLRB 532, 533 (1950), citing *E.R. Squibb & Sons*, 77 NLRB 84, 85 (1948). In *Pinkerton's*, the Board decided that nothing in the Act precluded the certification of a labor organization which represents guards as the representative for employees other than guards. *Ibid.* This holding was subsequently applied in *Dynair*, where the guards and non-guards both worked at the same location. *Ibid.*

Had I found that the petitioned-for employees were, in fact, guards, then the Intervenor could not be certified as their representative and therefore could not appear on the ballot in any directed election. Since I have determined that the petitioned-for employees are not guards and there is no contract bar in this proceeding, Board law does not prohibit the Petitioner from appearing on the ballot along with the Intervenor. However, if the Petitioner does choose to proceed with its petition, it could compromise and invalidate its status as a guard union.

METHOD OF ELECTION

The Board has held that the mechanics of an election, such as the date, time, and place, are left to the discretion of the Regional Director. *Ceva Logistics U.S., Inc.*, 357 NLRB 628 (2011); *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366, 1366 (1954). In addition, the Board has found that Regional Directors have the discretion to determine whether an election will be conducted manually or by mail ballot. See *Nouveau Elevator Industries, Inc.*, 326 NLRB 470, 471 (1998); NLRB Casehandling Manual (Part Two), Representation Proceedings, Section 11228 and Section 11301.2 (the determination over the method of election is not an issue subject to litigation).

On July 6, 2020, in response to the evolving realities of the pandemic, the Office of the General Counsel issued Memorandum GC 20-10, titled “Suggested Manual Election Protocols.” The suggested protocols include: polling times sufficient to accommodate social distancing without unnecessarily elongating exposure among Board Agents and observers; the employer’s certification in writing that polling area is consistently cleaned in conformity with CDC standards; a spacious polling area, sufficient to accommodate six-foot distancing; separate entrances and exits for voters; separate tables spaced six feet apart; sufficient disposable pencils without erasers for each voter to mark their ballot; glue sticks or tape to seal challenged ballot envelopes; plexiglass barriers of sufficient size to protect the observers and Board Agent(s); and provision of masks, hand sanitizer, gloves and disinfecting wipes.

Memorandum GC 20-10 also requests an employer’s written certification of how many individuals have been present in the facility within the preceding 14 days who have tested positive for Covid-19; who have been directed by a medical professional to proceed as if they have tested positive for Covid-19; who are awaiting results of a Covid-19 test; who are exhibiting symptoms of Covid-19; or who have had direct contact with anyone in the previous 14 days who has tested positive for Covid-19.

In *Aspirus Keweenaw*, 370 NLRB No. 45 (November 9, 2020), the Board set forth a detailed framework for how Regional Directors should exercise their discretion when considering whether to direct an election by mail. Specifically, the Board found that, in addition to the established circumstances where a mail ballot election can be conducted, one or more of the following situations will normally justify a mail ballot election:

1. The Agency office tasked with conducting the election is operating under “mandatory telework” status;

2. Either the 14-day trend in the number of new confirmed cases of COVID-19 in the county where the facility is located is increasing, or the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher;

3. The proposed manual election site cannot be established in a way that avoids violating mandatory state or local health orders relating to maximum gathering size;

4. The employer fails or refuses to commit to abide by the General Counsel's protocols for Manual Elections established in GC Memo 20-10;

5. There is a current COVID-19 outbreak at the facility or the employer refuses to disclose and certify its current status; and/or

6. Other similarly compelling circumstances.

The Board did not give increased weight to any particular factor, and specifically found that only one factor need be present in order to “normally suggest the propriety of using mail ballots under the extraordinary circumstances presented by this pandemic.” *Aspirus Keweenaw*, 370 NLRB No. 45, slip op. at 4. The Board indicated that a Regional Director who exercises discretion to direct a mail-ballot election when one or more of these situations exists will not have abused his or her discretion. *Id.*, slip op. at 8.

As of this writing, the overall 14-day trend in the number of new Covid-19 cases in Richmond County (Staten Island) is increasing, as demonstrated below. See <https://bao.arcgis.com/covid-19/jhu/county/36085.html>.

Date	Number of New Cases
17-Aug	146
16-Aug	183
15-Aug	176
14-Aug	179
13-Aug	311
12-Aug	383
11-Aug	0
10-Aug	0
9-Aug	137
8-Aug	196
7-Aug	182
6-Aug	139
5-Aug	111
4-Aug	131

Moreover, the 14-day positivity rate in the zip code where the facility at issue here is located (10314) is 5.64 percent. https://projects.thecity.nyc/2020_03_covid-19-tracker/. And the 7-day positivity rate for 9 out of the 12 zip codes on Staten Island is above 5%, with 6 out of the 12 zip codes having positivity rates between 6% and 9.8%. *Id.* Given the 14-day trend of increasing infection rates, I find that a mail-ballot election is appropriate in this matter under the second *Aspirus* factor.

Finally, the Employer did not present any evidence regarding proposed election arrangements during the hearing. While it stated generally in its brief that it is willing to comply with the protocols set forth in GC Memo 20-10, it provided no specifics regarding a proposed location, the dimensions of that location, and whether it could allow for appropriate social distancing and separate entrances and exits. The Employer did not propose to provide sufficient disposable pencils, glue sticks, tape, masks, hand sanitizer, gloves and wipes and stated only that it “could also coordinate with the Board to set up plastic partitions...” No proposal was made regarding a video inspection of the polling site. Also, while the Employer asserts that there is no current outbreak at the facility, it provided no information about whether it requests or requires COVID tests, self-certifications, or even temperature checks from its employees, residents or others who come to the facility. Therefore, it has not demonstrated that it can provide the required certifications as to how many individuals have been present in the facility within the preceding 14 days who have tested positive for Covid-19; who have been directed by a medical professional to proceed as if they have tested positive for Covid-19; who are awaiting results of a Covid-19 test; who are exhibiting symptoms of Covid-19; or who have had direct contact with anyone in the previous 14 days who has tested positive for Covid-19. This is of particular concern since the facility is a designated COVID-19 quarantine site.

Thus, I find that the fourth and fifth factors set forth in *Aspirus* are also not met because the Employer has not unequivocally committed to abide by the General Counsel’s protocols for manual elections established in GC Memo 20-10 and because it cannot provide the required certifications. The Board notes in its discussion of the fourth factor – failure or inability to comply with the protocols set forth in GC 20-10 – that the protocols are designed to ensure that manual elections can be conducted safely and efficiently. Accordingly, “[w]e shall therefore require employers who are requesting manual elections to unequivocally commit to abide by all of GC Memo 20-10’s suggested protocols. An employer’s failure or refusal to commit to abide by all of the suggested protocols will therefore ordinarily support the direction of a mail-ballot election.” *Aspirus* slip op. at 7.

I am therefore directing a mail ballot election based on the increasing 14-day trend in the number of new confirmed cases of Covid-19 in Richmond County where the facility at issue is located, and the Employer’s failure to satisfy *Aspirus* factors four and five. The safety of the voters, the observers, the party representatives, the Board agents conducting the election, and the public must be considered in determining the appropriate method for conducting the election. Mail balloting provides no additional risk. Even in the midst of this pandemic, the Region has successfully conducted a number of mail ballot elections. Based on the above and the record as a whole, I find that a mail ballot election is the most responsible and appropriate election method in this case.

CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The rulings at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is a New York corporation with an office and place of business located at 1133 Forest Hill Road, Staten Island, New York, where it is engaged in providing social services to children and youth. During the past year, a representative period, the Employer has derived gross revenues in excess of \$250,000 and purchased and received at its Staten Island facility goods and supplies valued in excess of \$5,000, directly from suppliers located outside the State of New York. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The Petitioner and Intervenor are labor organizations within the meaning of Section 2(5) of the Act and claim to represent certain employees of the Employer. The Petitioner admits into membership only guards and security officers and is not affiliated with any labor organization that admits into membership non-guards.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. There is no collective-bargaining agreement in effect covering any of the individuals in the petitioned-for unit and, therefore, no contract exists barring consideration of the instant petition.
6. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Youth Care Workers employed by the Employer at its 1133 Forest Hill Road, Staten Island, New York facility but excluding all other employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Special Patrolman Benevolent Association, District Council 37, AFSCME, AFL-CIO or neither labor organization.

A. Election Details

The election will be conducted by United States mail. The ballots will be mailed to employees employed in the appropriate collective-bargaining unit from the National Labor Relations Board, Region 29, on **September 8, 2021**. Voters must sign the outside of the

envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void. Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 29 office by the close of business on **September 29, 2021**. However, all ballots received in a signed envelope prior to the count will be included in the count. The mail ballots will be counted by video conference on a date and at a time and manner to be determined by the Regional Director after consultation with the parties.

If any eligible voter does not receive a mail ballot or otherwise requires a duplicate mail ballot kit, he or she should contact Region 29 Board Agent Delby Alba via telephone at 718-765-6179 or via e-mail at delby.alba@nrlrb.gov by no later than 5:00 p.m. on **September 17, 2021**, in order to arrange for another mail ballot kit to be sent to that employee.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **August 6, 2021**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by Monday, **August 23, 2021**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must

begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for

review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated: August 19, 2021



KATHY DREW KING
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 29
Two Metro Tech Center
Suite 5100
Brooklyn, NY 11201-3838



United States of America
National Labor Relations Board
NOTICE OF ELECTION



PURPOSE OF ELECTION: This election is to determine the representative, if any, desired by the eligible employees for purposes of collective bargaining with their employer. (See VOTING UNIT in this Notice of Election for description of eligible employees.) A majority of the valid ballots cast will determine the results of the election. Only one valid representation election may be held in a 12-month period.

SECRET BALLOT: The election will be by secret ballot carried out through the U.S. mail under the supervision of the Regional Director of the National Labor Relations Board (NLRB). A sample of the official ballot is shown on the next page of this Notice. Voters will be allowed to vote without interference, restraint, or coercion. Employees eligible to vote will receive in the mail *Instructions to Employees Voting by United States Mail*, a ballot, a blue envelope, and a yellow self-addressed envelope needing no postage.

ELIGIBILITY RULES: Employees eligible to vote are those described under the VOTING UNIT on the next page and include employees who did not work during the designated payroll period because they were ill or on vacation or temporarily laid off. Employees who have quit or been discharged for cause since the designated payroll period and who have not been rehired or reinstated prior to the date of this election are not eligible to vote.

CHALLENGE OF VOTERS: An agent of the Board or an authorized observer may question the eligibility of a voter. Such challenge must be made at the time the ballots are counted.

AUTHORIZED OBSERVERS: Each party may designate an equal number of observers, this number to be determined by the NLRB. These observers (a) act as checkers at the counting of ballots; (b) assist in identifying voters; (c) challenge voters and ballots; and (d) otherwise assist the NLRB.

METHOD AND DATE OF ELECTION

The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit. On Wednesday, September 8, 2021, ballots will be mailed to voters from the National Labor Relations Board, Region 29, Two Metro Tech Center, Suite 5100, Brooklyn, NY 11201-3838. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Friday, September 17, 2021, should communicate immediately with the National Labor Relations Board by contacting Region 29 Board Agent Delby Alba via telephone at 718-765-6179 or via e-mail at delby.alba@nrlrb.gov in order to arrange for another mail ballot kit to be sent to that employee.

All ballots will be commingled and counted by video conference on a date and at a time and manner to be determined by the Regional Director after consultation with the parties. Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 29 office by the close of business on September 29, 2021. However, all ballots received in a signed envelope prior to the count will be included in the count.



United States of America
National Labor Relations Board
NOTICE OF ELECTION





VOTING UNIT

EMPLOYEES ELIGIBLE TO VOTE:

Those eligible to vote are: Included: All full-time and regular part-time Youth Care Workers employed by the Employer at its 1133 Forest Hill Road, Staten Island, New York facility who were employed by the Employer during the payroll period ending August 6, 2021.

EMPLOYEES NOT ELIGIBLE TO VOTE:

Those not eligible to vote are: Excluded: All other employees, guards and supervisors as defined in the Act.

	<p>UNITED STATES OF AMERICA National Labor Relations Board 29-RC-275629 OFFICIAL SECRET BALLOT For Certain Employees of THE CHILDREN'S VILLAGE</p>	
Do you wish to be represented for collective-bargaining purposes by SPECIAL PATROLMAN BENEVOLENT ASSOCIATION, DISTRICT COUNCIL 37, AFSCME, AFL-CIO, or neither?		
MARK AN 'X' IN THE SQUARE OF YOUR CHOICE		
SPECIAL PATROLMAN BENEVOLENT ASSOCIATION	NEITHER	DISTRICT COUNCIL 37, AFSCME, AFL-CIO
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>DO NOT SIGN OR WRITE YOUR NAME OR INCLUDE OTHER MARKINGS THAT WOULD REVEAL YOUR IDENTITY. MARK AN "X" IN THE SQUARE OF YOUR CHOICE ONLY. If you make markings inside, or anywhere around, more than one square, you may request a new ballot by referring to the enclosed instructions. If you submit a ballot with markings inside, or anywhere around, more than one square, your ballot will not be counted.</p> <p>The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.</p>		



United States of America
National Labor Relations Board
NOTICE OF ELECTION



RIGHTS OF EMPLOYEES - FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union
- Choose representatives to bargain with your employer on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities
- In a State where such agreements are permitted, the Union and Employer may enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the Union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the Union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustment).

It is the responsibility of the National Labor Relations Board to protect employees in the exercise of these rights.

The Board wants all eligible voters to be fully informed about their rights under Federal law and wants both Employers and Unions to know what is expected of them when it holds an election.

If agents of either Unions or Employers interfere with your right to a free, fair, and honest election the election can be set aside by the Board. When appropriate, the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with the rights of employees and may result in setting aside of the election:

- Threatening loss of jobs or benefits by an Employer or a Union
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises
- An Employer firing employees to discourage or encourage union activity or a Union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time where attendance is mandatory, within the 24-hour period before the mail ballots are dispatched
- Incitement by either an Employer or a Union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a Union or an Employer to influence their votes

The National Labor Relations Board protects your right to a free choice.

Improper conduct will not be permitted. All parties are expected to cooperate fully with this Agency in maintaining basic principles of a fair election as required by law.

Anyone with a question about the election may contact the NLRB Board Agent Delby Alba via telephone at 718-765-6179 or via e-mail at delby.alba@nlr.gov or visit the NLRB website www.nlr.gov for assistance.

United States of America
National Labor Relations Board

**Instructions to Eligible Employees Voting
By United States Mail**



INSTRUCTIONS

1. MARK YOUR BALLOT IN SECRET BY PLACING AN X IN THE APPROPRIATE BOX. DO NOT SIGN OR WRITE YOUR NAME OR INCLUDE OTHER MARKINGS THAT WOULD REVEAL YOUR IDENTITY.
2. IF YOU SUBMIT A BALLOT WITH MARKINGS INSIDE, OR ANYWHERE AROUND, MORE THAN ONE SQUARE, YOUR BALLOT WILL NOT BE COUNTED. YOU MAY REQUEST A NEW BALLOT BY CALLING THE REGIONAL OFFICE AT THE NUMBER BELOW.
3. IT IS IMPORTANT TO MAINTAIN THE SECRECY OF YOUR BALLOT. DO NOT SHOW YOUR BALLOT TO ANYONE AFTER YOU HAVE MARKED IT.
4. PUT YOUR BALLOT IN THE BLUE ENVELOPE AND SEAL THE ENVELOPE.
5. PUT THE BLUE ENVELOPE CONTAINING THE BALLOT INTO THE YELLOW ADDRESSED RETURN ENVELOPE.
6. SIGN THE BACK OF THE YELLOW RETURN ENVELOPE IN THE SPACE PROVIDED. TO BE COUNTED, THE YELLOW RETURN ENVELOPE MUST BE SIGNED.
7. DO NOT PERMIT ANY PARTY – THE EMPLOYER, THE UNION(S), OR THEIR REPRESENTATIVES, OR AN EMPLOYEE-PETITIONER – TO HANDLE, COLLECT, OR MAIL YOUR BALLOT.
8. MAIL THE BALLOT IMMEDIATELY. NO POSTAGE IS NECESSARY. For further information, call the Regional Office at:
Region 29 Board Agent Delby Alba via telephone at 718-765-6179 or via e-mail at delby.alba@nlrb.gov

TO BE COUNTED, YOUR BALLOT SHOULD REACH THE REGIONAL OFFICE

BY September 29, 2021

RIGHTS OF EMPLOYEES

Under the National Labor Relations Act, employees have the right:

- To self-organization
- To form, join, or assist labor organizations
- To bargain collectively through representatives of their own choosing
- To act together for the purposes of collective bargaining or other mutual aid or protection
- To refuse to do any or all of these things unless the union and employer, in a state where such agreements are permitted, enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the union that they object to the use of their payments for non representational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustment).

It is the responsibility of the National Labor Relations Board to protect employees in the exercise of these rights.

The Board wants all eligible voters to be fully informed about their rights under Federal law and wants both employers and unions to know what is expected of them when it holds an election.

If agents of either unions or employers interfere with your right to a free, fair, and honest election, the election can be set aside by the Board. Where appropriate, the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with the rights of employees and may result in the setting aside of the election:

- Threatening loss of jobs or benefits by an employer or a union
- Promising or granting promotions, pay raises, or other benefits to influence an employee's vote by a party capable of carrying out such promises
- An employer firing employees to discourage or encourage union activity or a union causing them to be fired to encourage union activity
- Incitement by either an employer or a union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a union or an employer to influence their votes.

The National Labor Relations Board protects your right to a free choice

Improper conduct will not be permitted. All parties are expected to cooperate fully with this Agency in maintaining basic principles of a fair election as required by law. The National Labor Relations Board as an agency of the United States Government does not endorse any choice in the election.



NATIONAL LABOR RELATIONS BOARD
an agency of the
UNITED STATES GOVERNMENT

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

THE CHILDREN'S VILLAGE

Employer

and

Case 29-RC-275629

**SPECIAL PATROLMAN'S BENEVOLENT
ASSOCIATION**

Petitioner

and

DISTRICT COUNCIL 37, AFSCME, AFL-CIO

Intervenor

**ORDER APPROVING WITHDRAWAL OF PETITION
AND CANCELLING ELECTION**

On April 14, 2021, the Special Patrolman's Benevolent Association, herein called the Petitioner, filed a petition seeking to represent certain employees of The Children's Village, herein called the Employer, at its facility located at 1133 Forest Hill Road, Staten Island, New York.

On May 5, 2021, a hearing was conducted to determine whether the petitioned-for employees are guards within the meaning of Section 9(b)(3) of the Act. On August 19, 2021, the undersigned issued a Decision and Direction of Election in the following unit:

All full-time and regular part-time Youth Care Workers employed by the Employer at its 1133 Forest Hill Road, Staten Island, New York facility but excluding all other employees, guards and supervisors as defined in the Act.

Thereafter, on August 26, 2021, the Petitioner submitted a request to withdraw its petition in the above case. The Employer and District Council 37, the Intervenor, have no objection to the approval of the withdrawal. Accordingly,

IT IS ORDERED that the Petitioner's request to withdraw its petition is approved, with prejudice. Any petition filed by the Petitioner within six months from this date that encompasses the same or substantially the same unit of employees as involved in this matter will not be entertained unless good cause is shown.

IT IS FURTHER ORDERED that the mail ballot election scheduled for September 8, 2021 is cancelled. The Employer is requested to remove any Notices of Election it may have posted and to post a copy of this Order so that the employees may be advised that the mail ballot election scheduled for September 8, 2021, is canceled.

Dated: August 27, 2021

Teresa Poor

TERESA POOR
ACTING REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 29
Two Metro Tech Center
Suite 5100
Brooklyn, NY 11201-3838

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

THE CHILDREN'S VILLAGE

Employer

and

Case 29-RC-275629

**SPECIAL PATROLMAN'S BENEVOLENT
ASSOCIATION**

Petitioner

and

DISTRICT COUNCIL 37, AFSCME, AFL-CIO

Intervenor

**AFFIDAVIT OF SERVICE OF: Order Approving Withdrawal of Petition and
Cancelling Election, dated .**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on August 27, 2021, I served the above documents by electronic mail and regular mail upon the following persons, addressed to them at the following addresses:

Daniel Schudroff, Attorney at Law
Jackson Lewis, P.C.
666 Third Avenue
29th Floor
New York, NY 10017
daniel.schudroff@jacksonlewis.com
Fax: (212)972-3213

Deborah Finley-Troup, VP Human Resources
Children's Village
1133 Forest Hill Road
Staten Island, NY 10314
dfinley@childrensvillage.org

Ron Brown, Vice President
Special Patrolman Benevolent Association
1707 Unionport Road
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vze15p8p9@verizon.net

Onya Brinson, Attorney
125 Barclay Street
5th FL
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obrinson@dc37.net
Fax: (212)815-1440

AFSCME DISTRICT COUNCIL 37
55 WATER STREET
MANHATTAN, NY 10041-0004
Fax: (212)815-1321

Date

Linette Gayle, Designated Agent of NLRB

Name

Linette Gayle

Signature